DIVISION OF CONSUMER ADVOCACY
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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of HAWAIIAN ELECTRIC COMPANY, INC., HAWAI`I ELECTRIC LIGHT COMPANY, INC., MAUI ELECTRIC COMPANY, LIMITED, and NEXTERA ENERGY, INC. For Approval of the Proposed Change of Control and Related Matters.	)	DOCKET NO. 2015-0022

DIVISION OF CONSUMER ADVOCACY'S
REBUTTAL TESTIMONIES AND EXHIBITS

Pursuant to Order No. 33116, Establishing Dates For Additional Prefiled Testimony And Modifying Certain Procedural Dates, filed on September 11, 2015, the Division of Consumer Advocacy hereby submits its **REBUTTAL TESTIMONIES AND EXHIBITS** in the above docketed matter.

DATED: Honolulu, Hawaii, October 7, 2015.

Respectfully submitted,

By _____
JEFFREY T. ONO
Executive Director

DIVISION OF CONSUMER ADVOCACY

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REBUTTAL TESTIMONY AND EXHIBITS

OF

DEAN NISHINA

THE DIVISION OF CONSUMER ADVOCACY

SUBJECT: POLICY

CA EXHIBIT-24
DOCKET NO. 2015-0022

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REBUTTAL TESTIMONY OF DEAN NISHINA

I. INTRODUCTION.

Q. PLEASE STATE YOUR NAME, POSITION AND PLACE OF EMPLOYMENT.

A. My name is Dean Nishina and I am the Public Utilities and Transportation Officer for the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate").

Q. ARE YOU THE SAME DEAN NISHINA WHO SUBMITTED DIRECT TESTIMONY AND EXHIBITS IN THIS PROCEEDING, WHICH WERE NOTATED AS CA EXHIBIT-1 THROUGH CA EXHIBIT-4?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTAL TESTIMONY?

A. Subsequent to the filing of the answering and direct testimony of the Consumer Advocate on August 10, 2015, the Applicants[1] filed their responsive testimony,[2] which was limited to responding to answering the direct testimonies

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[1] The Applicants in this proceeding are Hawaiian Electric Company, Inc. ("HECO"), Maui Electric Company, Ltd. ("MECO"), and Hawaii Electric Light Company, Inc. ("HELCO") and NextEra Energy, Inc. ("NEE"). Hereafter, I will collectively refer to HECO, HELCO, and MECO as the "HECO Companies."

[2] Applicants filed their responsive testimonies on August 31, 2015.

filed by the Consumer Advocate and intervenors.[3] In the Applicants' responsive testimony, the Applicants identified new commitments and have significantly revised their estimate of the state economic benefits. As a result, the Commission filed Order No. 33116 (dated September 11, 2015) and set forth a new procedural schedule that allows for rebuttal testimony by the Consumer Advocate and intervenors and, subsequently, surrebuttal testimony of the Applicants. In Order No. 33116, the Commission makes clear that rebuttal testimony should be "strictly limited to responding to issues in the Applicants' Responsive Testimonies that have not been previously addressed in their direct testimony."[4]

Thus, pursuant to the Commission's guidance, my rebuttal testimony will be limited to responding to issues raised by the Applicants' Responsive Testimonies. As part of my rebuttal, I will generally limit my comments to my responses to the Applicants' new commitments that relate to the conditions that I sponsored and also address Applicants' comments on my direct testimony and recommendations.

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[3] Pursuant to Order No. 32695, filed on March 2, 2015, wherein the Commission granted intervention authority to 28 parties and Order No. 32740, filed on April 1, 2015, wherein the Commission granted intervention authority to another party, there are 29 parties that were allowed to intervene in this proceeding. Pursuant to Order No. 33155, filed on September 23, 2015, the Commission authorized Paniolo Power Company, LLC's withdrawal from this proceeding. Thus, as of the date of this filing, besides the Applicants and the Consumer Advocate, there are 28 intervenors.

[4] Order No. 33116, at 4.

The Consumer Advocate has not added any new witnesses and the following consultants, who offered direct testimony, are filing rebuttal testimony on behalf of the Consumer Advocate:

- Michael Brosch (Direct: CA Exhibit-11 through -13; and Rebuttal: CA Exhibit-29)
- Steven Carver (Direct: CA Exhibit-16 through -19; and Rebuttal: CA Exhibit-30 through CA-Exhibit 31)
- Ian Chan Hodges (Direct: CA Exhibit-5 through -6; and Rebuttal: CA Exhibit-27)
- Maximilian Chang (Direct: CA Exhibit-20 through -21; and Rebuttal: CA Exhibit-32)
- Tyler Comings (Direct: CA Exhibit-22 through -23; and Rebuttal: CA Exhibit-33)
- Stephen Hill (Direct: CA Exhibit-7 through -10; and Rebuttal: CA Exhibit-28)

I am confirming that none of the Consumer Advocate witnesses are expanding their scope of review and are responsible for the same issues that they addressed in direct testimony as set forth in Order No. 32739, filed on April 1, 2015 ("Order No. 32739"). These areas of responsibility are set forth on CA Exhibit-3, which was filed as a table with my direct testimony. Otherwise, consistent with the guidance set forth in Order No. 33116, the

Consumer Advocate's witnesses are limiting their rebuttal testimony to issues in the Applicants' Responsive Testimonies.

For the Commission's convenience, CA Exhibit-25 is an updated version of CA Exhibit-4, which identifies the recommended conditions that were offered in the Consumer Advocate's direct testimonies. This table is updated to include an additional column that: 1) identifies the Applicants' responses to the conditions that were summarized on Applicants Exhibit-55; 2) identifies the section of Consumer Advocate's rebuttal testimony that discusses the issues related to the recommended condition, where applicable; and 3) provides a very high level summary of the Consumer Advocate's response.

II. WHILE THE APPLICANTS HAVE OFFERED MANY MORE COMMITMENTS, THESE COMMITMENTS STILL DO NOT CLEARLY DEMONSTRATE THAT THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST.

Q. ON APPLICANTS EXHIBIT-37, APPLICANTS HAVE SUMMARIZED THE COMMITMENTS THAT THEY ARE OFFERING. THERE ARE A TOTAL OF 85 COMMITMENTS AND THERE ARE OVER 50 NEW AND/OR MODIFIED COMMITMENTS. PLEASE PROVIDE YOUR ASSESSMENT OF WHETHER APPLICANTS HAVE SIGNIFICANTLY IMPROVED THE SUPPORT NECESSARY FOR THE COMMISSION TO FIND THAT THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST.

A. The Applicants have significantly increased the number of commitments across the various areas of concerns and some of those new commitments are directly

responsive to testimony and recommendations that were made by the Consumer Advocate's witnesses. The Consumer Advocate acknowledges the Applicants' efforts to offer the additional commitments that respond to the Consumer Advocate's and Intervenors' concerns. Some of these new commitments will have value for customers, if the proposed transaction is approved, but many of the new commitments do not offer significant value to customers, and the Consumer Advocate recommends that the Commission adopt the Consumer Advocate's conditions as set forth in direct testimony. Furthermore, as summarized on Applicants Exhibit-55, the Applicants have rejected many recommendations by the Consumer Advocate, often with very little justification or explanation.

Q. PLEASE EXPLAIN WHAT YOU MEAN BY ASSERTING THAT MANY OF THE NEW COMMITMENTS DO NOT OFFER SIGNIFICANT VALUE TO CUSTOMERS.

A. The Applicants' commitments are in eleven different categories[5] and in each of those categories, the Applicants have offered at least one new commitment in their responsive testimonies. Some of these commitments, however, simply

[5] The commitment categories are: clean energy transformation; customer benefit and rate; charitable contributions and corporate responsibility; local management and governance; employee-specific; reliability and operational performance; safeguard competition in Hawaii's competitive energy markets; affiliate transaction and cost; capitalization and financing; accounting and ratemaking; and Commission jurisdiction. It should be noted that Applicants are offering six of the commitments in the customer benefit and rate category subject to the Commission adoption of all rate commitments.

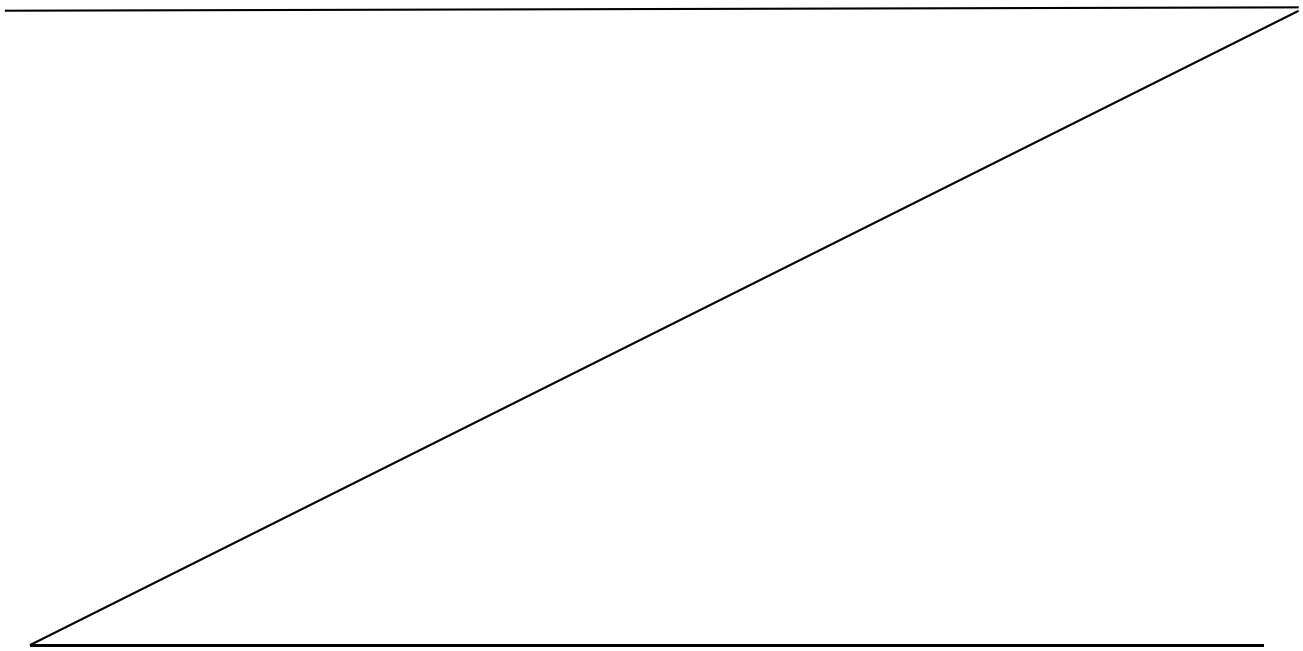
maintain the status quo or do not provide an increase in or any new benefits to customers.

One example would be commitment 7 on Applicants Exhibit-37, which is the proposed continued collaboration in the area of green technology innovation with DBEDT, Energy Excelerator and the University of Hawaii. Such work is currently ongoing, so this commitment simply maintains the status quo with no added value to consumers.

Other examples of commitments that do not reflect any significant increase in customer value are commitments 75, 76, and 77. These are accounting and ratemaking commitments, where the HECO Companies offer that they will continue to make ratemaking adjustments to remove incentive compensation, company-owned or leased aircraft, and named executive officer compensation expenses "until such costs are approved for recovery in rates." Currently, the base rates for HECO Companies' customers do not include these types of expenses and, in direct testimony, the Consumer Advocate sought to secure meaningful commitments that would ensure that customers would not be burdened with these types of costs. However, Applicants' offer to exclude such costs until they are approved for recovery in rates can only be read one way – Applicants seek to retain the right to seek cost recovery of these expenses and will, at some point in the future, include them in a rate case application.

Another example of how the Applicants' commitments do not clearly provide net benefits to the customers is illustrated by Mr. Brosch's discussion in his rebuttal testimony regarding the Applicants' projected transaction-enabled cost savings and purported benefits attributable to the rate moratorium. Mr. Brosch offers a detailed analysis that points out the many shortcomings in the Applicants' estimates and proposals. In fact, as discussed by the other Consumer Advocate witnesses in their rebuttal testimony, the Applicants' new conditions, in general, do not adequately address the originally stated concerns in the Consumer Advocate's direct testimonies.

As offered in my direct testimony, the Commission should evaluate whether Applicants have demonstrated substantial net benefits to consumers and, to the extent that the new commitments do not, the Commission must find that the proposed transaction is not in the public interest.



Q. IN DIRECT TESTIMONY, YOU URGED THE COMMISSION TO USE A STANDARD OF REVIEW THAT WOULD REQUIRE THE COMMISSION TO FIND THAT THE PROPOSED TRANSACTION RESULTS IN SUBSTANTIAL NET BENEFITS. IN RESPONSIVE TESTIMONIES, APPLICANTS HAVE ASSERTED THAT THE PROPOSED TRANSACTION WILL RESULT IN APPROXIMATELY $1 BILLION IN BENEFITS TO THE STATE. PLEASE EXPLAIN WHY YOU THINK THAT THIS IS INSUFFICIENT TO JUSTIFY THE PROPOSED TRANSACTION.

A. As discussed by Mr. Brosch and Mr. Comings in their rebuttal testimony, the Applicants' claim that the transaction will result in $1 billion in benefits is not credible. Furthermore, the Applicants' attempt to highlight these types of speculative and unsupported benefits in their responsive testimony ignores the Consumer Advocate's objection to the proposed transaction as being unclear as to how customers will benefit. While the Consumer Advocate's witnesses recommended conditions in direct testimony that will directly benefit customers, such as the rate plan described in Mr. Brosch's direct testimony, most of the Applicants' commitments do not directly or clearly translate into benefits that will be realized in customers' bills. This is not to say that the only method by which to evaluate the proposed transaction should be a customer bill impact analysis, but it is certainly an important and easily quantifiable method to ensure that there will be substantial net benefits to consumers, if the transaction is approved.

Q. YOU HAVE IDENTIFIED EXAMPLES OF APPLICANTS' COMMITMENTS THAT SIMPLY MAINTAIN THE STATUS QUO OR DO NOT CLEARLY RESULT IN CUSTOMER BENEFITS. HOWEVER, YOU EARLIER ACKNOWLEDGED THAT THERE ARE COMMITMENTS THAT WILL ADD VALUE TO THE CUSTOMERS' BENEFIT IF THE TRANSACTION IS APPROVED. DO YOU CONTEND THAT THESE COMMITMENTS ARE INSUFFICENT TO WARRANT THE COMMISSION FINDING THAT THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST?

A. Yes. The Consumer Advocate outlined a number of recommended conditions in direct testimony that, if adopted, will result in a transaction that is in the public interest. I acknowledge that the Applicants have offered commitments that move the needle in the right direction,[6] such as an implicit acknowledgement that the original commitment to forego the O&M rate base RAM for four years did not actually guarantee a $60 million consumer benefit as stated in the application, which was changed to an actual reduction of $60 million over four years in Applicants' responsive testimony. Unfortunately, even with the Applicants' new commitments, Applicants' 85 conditions still fall well short of the Consumer Advocate's recommended conditions. While the Applicants have identified amounts that may appear significant in their responsive testimonies,

[6] See, e.g., Mr. Hill's rebuttal testimony, beginning at page 4, where he discusses the new financial commitments and, while he welcomes many of the new commitments as adding to the financial independence of the HECO Companies, Mr. Hill concludes that the new commitments "do very little not already done by previous commitments. . ." and ". . . do not go far enough to protect the HECO Companies' Hawaii ratepayers. . ."

Hawaii's consumers are still being asked to "trust us" that the benefits will actually be there.

In the Consumer Advocate's rebuttal testimony, each of the Consumer Advocate's witnesses discusses their respective concerns and objections with the Applicants' new commitments and offer detailed analysis of how the Applicants have not provided sufficient quantifiable benefits to consumers. In addition, the Consumer Advocate's witnesses rebut the Applicants' objections to the conditions recommended in the Consumer Advocate's direct testimonies.

III. IN THE ABSENCE OF ADEQUATE COMMITMENTS THAT MEET OR EXCEED THE CONSUMER ADVOCATE'S RECOMMENDED CONDITIONS, THE PROPOSED TRANSACTION DOES NOT ADEQUATELY BENEFIT CONSUMERS AND, THEREFORE, IS NOT IN THE PUBLIC INTEREST.

Q. HAVE THE APPLICANTS DISCUSSED WHY THE CONSUMER ADVOCATE'S RECOMMENDED CONDITIONS ARE UNREASONABLE?

A. No, not really. The Applicants' main response to the conditions that have been recommended by the Consumer Advocate and intervenors appear to be in Mr. Reed's testimony and exhibits in Applicants Exhibit-50 through Applicants Exhibit-55. Applicants Exhibit-55 is Mr. Reed's discussion of 278 conditions that were recommended by the Consumer Advocate and the intervenors. For many of the conditions, other than what is reflected on Applicants Exhibit-55, Applicants have not offered any clear explanation of why the conditions should

not be adopted. Furthermore, many of the cursory explanations that are offered are not compelling at all.

Q. COULD YOU PLEASE ELABORATE WHAT YOU MEAN?

A. Yes. The following discussion on Mr. Reed's response to the recommended conditions will illustrate how the Applicants have not provided persuasive or compelling reasons why the Consumer Advocate's recommended conditions should not be adopted.

A. ACCOUNTING AND RATEMAKING CONDITIONS.

Q. DOES THE EXPLANATION OFFERED BY APPLICANTS ADDRESS THE CONSUMER ADVOCATE CONDITION RM15, WHICH SOUGHT A COMMITMENT THAT CUSTOMERS WOULD NOT BE DIRECTLY CHARGED OR ALLOCATED ANY CHARITABLE CONTRIBUTIONS OR IMAGE/PROMOTIONAL ADVERTISING COSTS?

A. Applicants' response only partially addresses this condition.[7] The Consumer Advocate was seeking a firm commitment that these types of costs would not be sought as a recoverable cost in any rate recovery mechanism in future proceedings or filings. As discussed earlier, however, the

[7] The Applicants' response is #8 on the catalog presented as Applicants Exhibit-55. For sake of convenience, each of the following sections uses the Applicants' categorizations of the proposed conditions that are used in the "TOPIC" column of Applicants Exhibit-55.

Applicants' commitment, as set forth as commitment 79 on Applicants Exhibit-37, included language that makes clear that Applicants are reserving the right to seek recovery of these types of expenses at some point in the future.

While the HECO Companies have not sought recovery of these types of expenses in recent rate proceedings, the Commission and the Consumer Advocate should not have to waste unnecessary time in future rate proceedings arguing over these types of expenses. Thus, Mr. Reed may assert that my condition RM15 has been addressed, but it has not been adequately addressed.

B. AFFILIATE.

Q. HAVE THE APPLICANTS ADEQUATELY ADDRESSED YOUR RECOMMENDED CONDITIONS THAT THE APPLICANTS HAVE CATEGORIZED AS "AFFILIATE"?

A. No. The Applicants have rejected both of my recommendations under this category.

1. Adequate Protections Should be Put in Place to Mitigate Possible Employee Movement That Would Result in Hawaii Customers Paying for Training and Experience That Would Then Benefit NEE Affiliates.

Q. YOUR RECOMMENED CONDITION, EM3, PROVIDES COMPENSATION TO THE HECO COMPANIES WHEN A HECO COMPANIES' EMPLOYEE MOVED TO NEE OR AN AFFILIATE/NEE SUBSIDIARY. WHY WAS THIS REJECTED BY THE APPLICANTS?

A. As set forth on Applicants Exhibit-55, this condition apparently "unreasonably restricts employees' career and company from benefitting from information learned during employment." Beyond this response on Applicants Exhibit-55, the Applicants have not offered further discussion.

This recommended condition was not meant to prevent such movement. The recommended condition clearly sets forth that, upon movement, compensation from the NEE affiliate to either HECO, HELCO, or MECO would be required. In this way, if a HECO Companies' employee who was trained and gained experience in Hawaii moved to an affiliate, HECO Companies' customers will not subsidize the affiliate to which the employee moved. Instead, the compensation would represent a fraction of what was likely spent to train and compensate that employee who gained valuable experience that will then benefit NEE or its affiliate to the detriment of the HECO Companies.

Other jurisdictions have similar requirements upon employee movement from a regulated utility company to an unregulated affiliate. For example,

California adopted "Affiliate Transaction Rules Applicable to Large California Energy Utilities," that requires the affiliate to "make a one-time payment to the regulated utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included."[8] Thus, contrary to Applicants' assertions, this condition is reasonable and it does not affect career development; it serves to protect regulated customers from subsidizing affiliated interests. As mentioned in my direct testimony, the HECO Companies have considerable experience in integrating renewable energy and, by ensuring some form of compensation if a HECO Companies' employee moves to an unregulated affiliate, it does not prevent movement between affiliates; it simply provides some benefit to the HECO Companies' customers to mitigate the loss of training and experience of a regulated utility employee whose compensation was embedded in the rates paid for by the HECO Companies' customers.

[8] See, section V.G.2.c. of the California Public Utilities Commission's affiliate rules. For convenience, I am attaching a copy as CA Exhibit-26.

2. Adequate Protection is Needed to Mitigate Possible Instances of Unregulated Affiliates Taking Advantage of Their Relationship With the Regulated Utility Company.

Q. YOUR RECOMMENDED CONDITION, CO2, WOULD REQUIRE THAT THERE SHOULD BE NO UTILITY PROCEDURE OR PROCESS THAT WOULD UNFAIRLY DIRECT REGULATED UTILITY CUSTOMERS TO AN AFFILIATE AND THE AVOIDANCE OF ANY ADVERTISING THAT MIGHT BE INTERPRETED BY A CUSTOMER THAT AN UNREGULATED SERVICE IS PART OF REGULATED SERVICE. WHY WAS THIS REJECTED BY THE APPLICANTS?

A. Applicants contend that this is "[u]nnecessary and unclear because fairness would be subject to determination by the Commission in the event of customer complaints."[9] This position is rather curious since NEE and its regulated affiliate, FPL, should be very familiar with this type of provision. As I discussed in my direct testimony, at 35 – 36, transactions between FPL and an unregulated affiliate resulted in actions by the Florida Public Service Commission that established procedures to prevent similar future occurrences.

Thus, rather than asserting that my condition is unnecessary and unclear, the Applicants should acknowledge that this type of condition has been established in FPL's jurisdiction. Given the context in which I presented my recommended condition, to claim that the recommended condition is

9 See #28 of Applicants Exhibit-55.

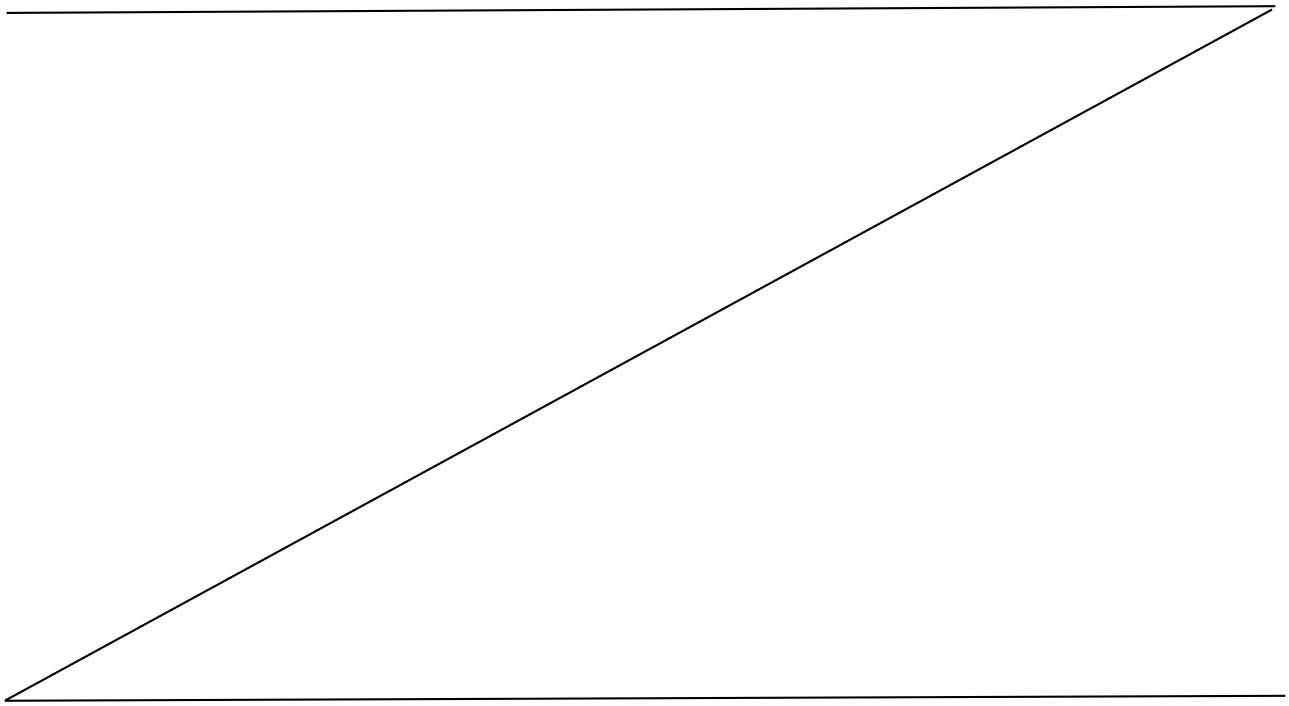
unnecessary and unclear is disingenuous. Furthermore, this type of condition is not uncommon. In the rules provided as CA Exhibit-26, California has established various guidelines meant to address affiliated relationships to preclude a regulated company from providing preferential treatment to affiliates or to utilize the relationship to provide leads or otherwise solicit business on behalf of affiliates. This recommended condition is reasonable and necessary and should be included in the rules governing any interaction between the HECO Companies and its affiliates.

3. If the Proposed Transaction is Approved, a Report Similar to the Dennis Thomas Report is a Reasonable Measure.

Q. YOU RECOMMENDED THAT, 24 MONTHS AFTER THE TRANSACTION HAS BEEN CONSUMMATED, A STUDY AND REPORT SIMILAR TO THE DENNIS THOMAS REPORT SHOULD BE CONDUCTED. WHILE THE APPLICANTS HAVE ASSERTED THAT IT IS UNNECESSARY, DO YOU STILL SUPPORT THIS RECOMMENDATION?

A. Yes. This recommendation, which was offered as condition AT8 and rejected as #41 on Applicants Exhibit-55, was meant to allow for some time for the HECO Companies to complete the necessary changes to be made after the transaction was consummated before conducting such a report. Applicants contend that their commitments 41 through 46 as well as 47 through 52 address the need for this report.

It would be a prudent step to require a report similar to the Dennis Thomas report. This type of study and report should be conducted after a period long enough to allow the majority of the process and organizational changes to be completed and in place for at least a few months. If the study is performed too soon, it could necessitate another study after the transitional period, which would be inefficient and a waste of resources. Commitments 41 through 46 and 47 through 52 do address some of the possible concerns, but there may be other concerns that are not currently foreseen that may arise. Subsequently addressing future concerns on a case-by-case basis may be appropriate, but a comprehensive study is a reasonable measure to address possible affiliated and competitive concerns shortly after the transaction has been consummated.



C. APPLICANTS' COMMITMENT 64 DOES NOT ADDRESS THE UNDERLYING CONCERN OF CONDITION LG7.

Q. THE APPLICANTS CONTEND THAT COMMITMENT 64 ON APPLICANTS EXHIBIT-37 PARTIALLY ADDRESSES THE RECOMMENDED CONDITION THAT WOULD REQUIRE THE HECO COMPANIES TO SHOW THAT THE POTENTIAL BENEFITS OF SHIFTING INCOME TAX LIABILITIES (FROM HAWAII) TO ANY OTHER JURISDICTION RESULTS IN POTENTIAL BENEFITS TO CUSTOMERS BEFORE MAKING ANY SUCH CHANGE. DO YOU AGREE THAT APPLICANTS' COMMITMENT 64 ADDRESSES THE CONCERN?

A. No. Commitment 64[10] is actually related to a different issue. Applicants are offering reassurances that the transaction will not affect the standalone regulatory tax treatment of the HECO Companies. This is an issue that is discussed in both Mr. Hill's and Mr. Brosch's direct testimonies. While the Applicants contend that they will "indemnify the Hawaiian Electric Companies for any liability for . . . income taxes . . . in excess of the Hawaiian Electric Companies' standalone liability for . . . income taxes", the Consumer Advocate questions the value of this commitment.

[10] Commitment 64 is reported under Applicants' topic of "Capitalization and Financing" on Applicants Exhibit-55.

Generally, a consolidated income tax return calculates an overall tax liability for all of the companies included in the consolidated group. The consolidated income tax return allows those companies in the group with positive tax income to be offset by the tax losses of other companies in the group. With this offset, the overall tax liability for the group is generally lower than it would be if each company filed a separate income tax return. Thus, when the regulated utility is required to use a standalone tax calculation for ratemaking purposes, which ignores the benefit of losses from other companies in the consolidated group, regulated utility customers may actually pay more than they should in higher rates. Shareholders are then able to "pocket" the difference between the higher taxes paid for by customers and the actual taxes paid by the consolidated group.

Applicants' commitment 64 attempts to obfuscate the issue by focusing on the flip side of the coin when the utility's income tax rate on a standalone basis may be lower than the consolidated income tax rate. However, based on historical experience, the utility's income tax rate on a standalone basis has tended to be higher than the rate it would otherwise face if assessed on a consolidated basis. As a result, Applicants' commitment 64 would likely deny customers the opportunity to benefit from the lower effective tax rate that could be paid on a consolidated basis.

Q. WHAT TAX ISSUE CONCERNS DID YOU IDENTIFY THAT THE APPLICANTS FAILED TO ADDRESS WITH THEIR PROPOSED COMMITMENT 64?

A. None of the Applicants' commitments address the potential for NEE to shift any part of its income tax liability from Hawaii to another jurisdiction. This is addressed by my condition LG7. Given that Hawaii's corporate income tax rate is 6.4%, which is higher than Florida's corporate income tax rate of 5.5%, NEE may attempt to shift its state taxable income to Florida to reduce its overall state income tax liability. Such an action would reduce the tax collections in Hawaii, which could adversely affect the state's economy because those tax revenues would then be collected by another state. Unless the HECO Companies could show a significant benefit that would be realized by customers, that type of action should not be authorized. This includes demonstrating how these tax benefits will be delivered to the HECO Companies' customers rather than simply being retained by shareholders.

The Commission should adopt the recommended condition that is set forth as LG7 and not accept the Applicants' commitment 64. Condition LG7 ensures that the HECO Companies' customers will benefit should there be significant savings associated with shifting the utility's tax liability to another jurisdiction. Applicants' commitment 64 does nothing to address this issue. Moreover, Applicants' commitment 64 would hold the HECO Companies to the standalone tax calculation for ratemaking purposes, which would, for the reasons described above, benefit shareholders but not customers. Further, if

NEE has no intent to ever shift Hawaii tax liability to another jurisdiction, it should not object to the condition.

D. CUSTOMER BENEFIT.

1. As a Sign of Their Commitment to Hawaii, Applicants Should be Willing to Support the Proposed Investment Fund.

Q. THE APPLICANTS REJECTED THE PROPOSED CONDITION THAT WOULD RESULT IN FUNDS TO BE USED AS CONTRIBUTIONS IN AID OF CONSTRUCTION FOR TRANSFORMATIONAL PROJECTS. PLEASE DISCUSS.

A. Certainly. First, I would point out that, rather than outright rejection, the Applicants contend that my condition TR1 is partially addressed by commitment 14.[11] On Applicants Exhibit-55, Applicants reject this condition and then contend that it is "partially addressed by commitment 14." Commitment 14 on Applicants Exhibit-37 states that "NextEra Energy will establish a funding mechanism and pre-fund $2.5 million per year for each year of the four-year general base rate case moratorium to be used for appropriate purposes in the public interest, at the Commission's discretion and direction, as permitted by law."

[11] See #207 of Applicants Exhibit-55.

Next, while my recommended condition was a means by which to partially mitigate the financial impact that will fall upon HECO Companies' customers as the HECO Companies make substantial investments to modernize the grid and transform to a clean energy future, the Applicants are clearly seeking to make a much smaller commitment. Not only is their pre-funding commitment limited to a total of $10 million, as discussed in their commitment 19 on Applicants Exhibit-37, their proposed commitment to work on programs that will directly benefit low-income customers would also be funded from the $10 million pre-funded balance. Consumer Advocate witness Mr. Chang will discuss the reasonableness of using $10 million for the proposed condition requiring a commitment to support low-income programs in his rebuttal testimony.

Applicants' proposal to fund both the low-income program and the transformational efforts falls well short of the benefits being delivered to shareholders, if the proposed transaction is approved. In developing this recommended condition, I considered the proposed transaction, which will provide shareholders with a significant premium, which has been identified, at one point, as $1.464 billion.[12] I also considered the potential costs of the

[12] See Applicants' response to DOD-IR-52, which indicated that the preliminary estimate of the premium, as of December 3, 2014, was $1.464 billion. I note, however, that there are other estimates for the transaction premium, including the $568 million estimated by the Office of Planning's witness, Mr. Hempling (see Planning Office Exhibit-4, at 13), for the control premium. In addition, Applicants, in their response to HBWS-IR-35, identified an estimate of $599 million for the control premium.

anticipated future investment to move towards clean energy. In the HECO Companies' recent capital budget presentation, the HECO Companies' budget for the next five years (2015 – 2019) is $3.4 billion dollars, which, if realized and reflected in rate base, would represent significantly higher levels of income for shareholders.[13]

Thus, the proposed investment fund is not unreasonable, especially in light of the $10 million commitment that was demonstrated by Larry Ellison to support the small water and wastewater utilities on Lana'i in Docket No. 2012-0157.[14] I contend that my recommendation is reasonable and that Applicants should consider their commitment to this transaction and Hawaii in reassessing their response to this condition.

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[13] The five-year capital budget did reflect a decrease from the estimates originally reflected in the HECO Companies' power supply improvement plans ($3.8 billion for the same period).

[14] This refers to the commitment made by the acquiring entity involving three utility companies on Lana'i that was approved by the Commission in Docket No. 2012-0157. I discussed this transaction on page 17 of CA Exhibit-1.

2. Agreeing to Retire Certain Assets Without Seeking Recovery of the Net Book Value Would Be Another Strong Sign of Commitment.

Q. IN ADDITION TO THE RECOMMENDED INVESTMENT FUND, YOU ALSO RECOMMENDED THAT THE APPLICANTS SHOULD NOT SEEK RECOVERY OF CERTAIN ASSETS AS PART OF THE APPLICANTS' COMMITMENT TO SUPPORT TRANSFORMATIONAL EFFORTS IN HAWAII. THE APPLICANTS REJECTED THIS RECOMMENDED CONDITION, PLEASE EXPLAIN WHY.

A. As summarized as #208 of Applicants Exhibit-55, the Applicants contend that the condition is "confiscatory and provides a disincentive for retirement of assets." This is one of the conditions that I recommended where the Applicants provided more than a summary response that is reflected on Applicants Exhibit-55. As set forth in Applicants Exhibit-79, beginning on page 59, Ms. Sekimura elaborates on their rejection of the recommended condition. Ms. Sekimura contends that Moody's has raised concerns about the possibility of under-recovery occurring with the transformation of the HECO Companies' business model and that the recommended condition would exacerbate these concerns. In addition, Ms. Sekimura's testimony includes an assertion that the condition would be unfair to investors and that, if an investment is prudently incurred, the opportunity to recover that investment is part of the regulatory compact.

Q. HOW DO YOU RESPOND TO THESE CONCERNS?

A. The bases for this recommended condition are similar to the reasons for the condition that I proposed for the investment fund. This condition that Applicants would forego cost recovery for certain allegedly stranded assets was meant to identify a way of not only ensuring that customers receive a direct and tangible benefit, but also as a means for the Applicants to demonstrate their commitment to addressing customer concerns with high electricity rates and bills.

I would also like to make clear that I am not proposing a rate base disallowance in a rate case. Ms. Sekimura's arguments that my recommended condition would be contrary to the regulatory compact and that I have not offered evidence that the investments were not prudently incurred completely miss the point of the recommended condition. Ms. Sekimura's response in a rate case proceeding would be expected; however, as I made clear in my direct testimony, this recommended condition was meant to be "a sign of the Applicants' commitment to Hawaii's transformational efforts . . ."[15]

[15] See CA Exhibit-1, at 18.

Q. MS. SEKIMURA OFFERED THAT, RATHER THAN THE PROPOSED CONDITION, THERE ARE POSSIBLE SOLUTIONS TO MITIGATE THE IMPACT OF RECOVERY OF STRANDED INVESTMENTS. DO YOU HAVE A RESPONSE TO HER TESTIMONY?

A. Yes. Ms. Sekimura's reference to HRS § 269-6(d)(3), which includes the relevant statutory language, will not "mitigate the impact of recovery of stranded investment" on customers. To the contrary, the quoted language would likely result in an added burden to customers. In recognition that there are old fossil-fueled generation assets that may be adversely affecting the ability of the HECO Companies from being able to accept more intermittent sources of renewable energy, the legislature saw fit to allow the Commission to consider cost recovery mechanisms that would accelerate retirement of those assets. Thus, her assertion that this would somehow mitigate the impact on customers is clearly baseless – the cited language was meant to address utility concerns regarding cost recovery not customer concerns.

The Applicants are asking the Commission to find that the proposed transaction is in the public interest. As a result of not being able to find clear and tangible means by which customers would realize some relief as a result of the proposed transaction, especially in the face of shareholders receiving additional benefits if the transaction is approved, the Consumer Advocate sought to offer various conditions that would result in clear near-term and long-term benefits. This condition was one such condition.

I encourage the Applicants to look beyond the misguided and/or traditional responses to the Consumer Advocate's recommended conditions to help their own cause of convincing the Commission that the proposed transaction is in the public interest. The Applicants should not be content to simply increase their estimate of potential benefits in their surrebuttal testimonies; Applicants should provide a transparent plan by which those estimated benefits will be "hard-wired" into a rate plan that will result in measurable and substantial net benefits for customers. Applicants should also not offer further new or modified commitments that are cagily worded that may be perceived as an attempt to pull the wool over the other parties' eyes. This will only lead to unproductive exchanges amongst the parties that will benefit no one.

Based on the proposed transaction, it is clear how shareholders will benefit. However, in the absence of more compelling commitments that clearly illustrate how customers may directly and tangibly benefit from the proposed transaction, the Applicants will likely fail to convince the Commission that the proposed transaction is in the public interest. In addition, and, more importantly, the Applicants will fail to convince consumers that the proposed transaction is in their best interest.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes. It does.

Consumer Advocate's Recommended Conditions

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
FINANCIAL SAFEGUARDS				
Financial Safeguards	FS1	Hill (p. 66)	Condition 16 of the 1982 Agreement be retained (except for necessary name changes)	#40 of Applicants Exhibit-55. Applicants address with commitment 83 and Applicants Exhibit 84. Not specifically addressed in CA rebuttal.
Financial Safeguards	FS2	Hill (p. 65)	Remove the phrase "as in the pre-corporate-restructuring period" from the 1982 Agreement condition 8	#39 of Applicants Exhibit-55. Applicants address with commitment 83 and Applicants Exhibit 84. Not specifically addressed in CA rebuttal.
Financial Safeguards	FS3	Hill (p. 83)	HEH and HECO Companies should not participate in any NEE (affiliates or subsidiaries) short-term debt money pool operations	#50 of Applicants Exhibit-55. Applicants address with commitment 60. CA acknowledges in CA Exhibit-28, at page 10.
LOCAL GOVERNANCE				
Local Governance	LG1	Chan Hodges (pp. 26-27)	Immediately following approval of the proposed Change in Control, HEH will elect to become a Sustainable Business Corporation pursuant to HRS Chapter 420D. In addition	#77 of Applicants Exhibit-55. Applicants reject as unprecedented and partially addressed by commitment 18. Discussed in CA Exhibit-27, starting at 5 and CA points out

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			to the general public benefit purpose required by HRS §420D-5(a), the articles of HEH will identify the following specific public benefits: (1) Providing low-income or underserved individuals or communities with beneficial products or services; (2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business; (3) Preserving the environment; (4) Improving human health; (5) Promoting the arts, sciences, or advancement of knowledge; (6) Increasing the flow of capital to entities with a public benefit purpose; (7) Accomplishing any other particular benefit for society or the environment; and (8) Using the primary power of intellectual property (and excluding others from making,	the insufficient support for Applicants' rejection.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			using or selling the invention) conferred by any and all patents to which HEH has an interest in to create and retain good jobs, uphold fair labor standards and enhance environmental protection.	
Local Governance	LG2	Chan Hodges (pp. 27-28)	Within 90 days of approval of the proposed Change in Control, HEH will have elected its public Benefit Director pursuant to HRS §420D-7 and selected its public Benefit Officer pursuant to HRS §420D-9. The articles of HEH will prescribe the additional qualification that both HEH's public Benefit Director and its Benefit Officer will be selected with the advice and consent of the Commission. In addition to their reporting obligations under HRS §420D-11, HEH's public Benefit Director and Benefit Officer will report quarterly to the Commission and	#206 of Applicants Exhibit-55. Applicants reject as unprecedented and partially addressed by commitment 18. Discussed in CA Exhibit-27, starting at 5 and CA discusses insufficient support for Applicants' rejection.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			the Consumer Advocate on progress made in the previous quarter by HEH in improving delivery of each of the eight specific public benefits listed in HRS §420D-5(b). NextEra, HEH and HECO will not restrict nor impede through non-disclosure agreement or other means the public benefit reporting duties of HEH's public Benefit Director and Benefit Officer as required by HRS §420D-11.	
Local Governance	LG3	Chan Hodges (p. 28)	Within 18 months of approval of the proposed Change in Control, the HECO Companies will have met all standards of accountability and transparency as well as social and environmental performance that are required to obtain certification as a B Corporation from B Lab. The HECO Companies will make whatever changes to its corporate policies, practices and	#242 of Applicants Exhibit-55. Applicants reject as unprecedented and partially addressed by commitment 18. Discussed in CA Exhibit-27, starting at 5, and CA discusses insufficient support for Applicants' rejection.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			governance that are necessary to achieve the minimum score of 80 required for B Corp certification. The HECO Companies will supply all documentation used to support its responses on the B Corp assessment to the Commission and the Consumer Advocate. During the biennial B Corp recertification process, the HECO Companies will commit to increase its score on the B Corp. assessment by a minimum of 5 points.	
Local Governance	LG4	Chan Hodges (p. 29)	In addition to its national Corporate Responsibility Report, NextEra will complete an annual report specifically for Hawaii. This Hawaii Corporate Responsibility Report will include separate sections describing in detail with relevant and up-to-date metrics the activities of every NextEra subsidiary and affiliate doing business in Hawaii. NextEra's Hawaii Responsibility Report will also include separate	#78 of Applicants Exhibit-55. Applicants' commitment 18 adopts the recommended condition. Not specifically addressed in CA rebuttal.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			sections on each of the Hawaiian islands where any NextEra subsidiary or affiliate has done business during the year covered by the report. In addition, the Hawaii Responsibility Report will include a detailed description with relevant metrics on the progress that NextEra is making in operating as a Hawaii business, including progress in creating value for Hawaii's triple bottom line of Kuleana, Malama Pono and Aloha. NextEra will work with the Commission and the Consumer Advocate to develop metrics and assessment tools specifically for use within its Hawaii Responsibility Report.	
Local Governance	LG5	Chan Hodges (p. 29)	NextEra's CEO will travel to Hawaii for quarterly meetings with the Commission, the Consumer Advocate and other Hawaii stakeholders	#243 of Applicants Exhibit-55. Applicants address with commitments 29 and 30. Not specifically addressed in CA rebuttal testimony.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			NextEra's CEO will also hold annual community meetings open to the public on every island where NextEra does business.	
Local Governance	LG6	Chan Hodges (p. 30)	NextEra will work with the Commission, Consumer Advocate and other relevant stakeholders to develop an inclusive energy innovation ecosystem strategy that will enable Hawaii — over the next 30 years — to achieve the specific energy goals set forth in the policy framework established by the Commission and the Legislature.	#88 of Applicants Exhibit-55. Applicants have offered commitments 1 through 7. Not specifically addressed in CA rebuttal.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
Local Governance	LG7	Nishina (pp. 10-11)	In the event that corporate decisions result in shifting state income tax liabilities from Hawaii to any other jurisdiction for the HECO Companies, HECO Companies must show that the potential benefits must be significant enough to warrant the change as well as how the benefits will be delivered to customers before the change is made.	#51 of Applicants Exhibit-55. Applicants contend that commitment 64 partially addresses. Discussed in CA Exhibit-24 (as well as CA Exhibit-29). Applicants' wording is not in the consumers' interest.
Local Governance	LG8	Chang (p. 8)	NextEra will work with the Commission, Consumer Advocate, and other relevant agencies to develop specific programs that will benefit low-income customers directly.	#76 of Applicants Exhibit-55. Applicants contend that commitment 19 addresses. Discussed in CA Exhibit-32, beginning at 3.
Local Governance	LG9	Chang (p. 12)	NextEra will maintain or increase its current charitable contributions. NextEra will also ensure that, as part of the spinoff of ASB Hawaii, the new owner maintains or increases its current level of charitable contributions.	#75 of Applicants Exhibit-55. Applicants contend that commitments 15 and 16 address. Not specifically addressed in CA rebuttal.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
RING FENCING				
Ring Fencing	RF1	Hill (p. 85)	A voting board of directors should be installed at HEH.	#239 of Applicants Exhibit-55. Applicants reject and contend that sufficient protections are found in commitments 20 through 31. CA addresses in CA Exhibit-28, beginning at 16.
Ring Fencing	RF2	Hill (p. 85)	Four of the directors should be from Hawaii.	#240 of Applicants Exhibit-55. Applicants reject and contend that sufficient protections are found in commitments 20 through 31. Discussed in CA Exhibit-28, beginning at 8.
Ring Fencing	RF3	Hill (p. 85)	One of the HEH board members should be an independent director and, without the approval of this director, the HECO Companies cannot be moved into bankruptcy.	#241 of Applicants Exhibit-55. Applicants reject and contend that sufficient protections are found in commitments 20 through 31. Addressed in CA Exhibit-28, beginning at 16.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
Ring Fencing	RF4	Hill (p. 85)	Following the close of the transaction, NEE to submit a non-consolidating legal opinion that confirms that it will not attempt to consolidate HECO assets with NEE assets in the event of either financial stress or bankruptcy proceedings at the parent company.	Not specifically addressed by Applicants. Addressed in CA Exhibit-28, beginning at 17.
Ring Fencing	RF5	Chang (pp. 37-38)	NextEra will put in place, within six months of the Merger's closing, ring fencing measures to protect Hawaiian Electric Companies' ratepayers the costs associated with NextEra's or FPL's nuclear plant retirements (premature or otherwise.) These protections should extend as far as the potential end to decommissioning of each of the Applicants' nuclear plants and be subject to Commission approval.	#49 of Applicants Exhibit-55. Applicants reject and offer testimony from Lapson in response. Discussed in CA Exhibit-32, beginning at 19.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
RATEMAKING				
Ratemaking	RM1	Hill (p. 87)	Reduce the going-forward cost of equity to 9.0%.	#204 of Applicants Exhibit-55. Applicants reject and contend that it is partially addressed by commitments 8 through 14. CA addressed in CA Exhibit-28, beginning at 21.
Ratemaking	RM2	Hill (pp. 89-90)	Reset capital structure to reflect 47% equity and 53% debt.	#205 of Applicants Exhibit-55. Applicants reject and contend that it is partially addressed by commitments 8 through 14. CA addressed in CA Exhibit-28, beginning at 21.
Ratemaking	RM3	Brosch (p. 64)	The HECO Companies shall each file tariffs reducing each of the non-fuel base energy charge rates to each customer class by $0.007 (seven tenths of one cent) per kWh, to be effective upon consummation of the proposed Change in Control, with corresponding prospective downward adjustment to the target revenues of each utility for Revenue Balancing Account purposes.	#200 of Applicants Exhibit-55. Applicants reject on the basis that this should be determined in a future rate proceeding and that it is addressed by commitments 8 through 14. Discussed in CA Exhibit-29, beginning at 28 and refutes Applicants' assertions.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
Ratemaking	RM4	Brosch (p. 64)	The HECO Companies shall not submit an application seeking a base rate/revenue increase prior to the date 48 months subsequent to the date of closing of the proposed Change in Control. This condition shall not preclude requests for base revenue reduction filings or revenue-neutral tariff modifications during this moratorium period. If there is a financial need for a base rate/revenue increase that violates this rate case moratorium period, the base revenue increase shown to be justified under such circumstances shall be revised downward to reflect a rate of return on common equity penalty reduction of 100 basis points (1.0 percent) from the otherwise appropriate common equity return levels.	#201 of Applicants Exhibit-55. Applicants reject the condition as an item that should be determined in a future rate proceeding and that it is addressed by commitments 8 through 14. Discussed in CA Exhibit-29, beginning at 29 and refutes Applicants' assertions.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
Ratemaking	RM5	Brosch (p. 64)	The modified decoupling mechanism approved by the Commission in Order No. 32735 shall remain in effect during the rate case moratorium period, subject to any Commission authorized changes.	#202 of Applicants Exhibit-55. Applicants refer to commitment 13. Discussed in CA Exhibit-29, beginning at 68.
Ratemaking	RM6	Brosch (p. 65)	The Rate Base RAM filings submitted by each of the Hawaiian Electric Companies, for all periods after closing of the proposed Change in Control and until a next general rate case order, shall be revised to reflect an approved return on Common Equity of 9.0 percent and a Common Equity ratio of 47 percent (with corresponding upward adjustment to the long term debt capital ratio). The same return on Common Equity and Common Equity Ratio assumptions should be utilized in AFUDC rate determination	#203 of Applicants Exhibit-55. Rejected by Applicants on the basis that this condition is an item that should be determined in a future rate proceeding and that it is addressed by commitments 8 through 14. Discussed in CA Exhibit-29, beginning at 28 and rebuts Applicants' arguments to demonstrate the need for the proposed condition.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			calculations for all periods after closing of the proposed Change in Control and until a next general rate case order.	
Ratemaking	RM7	Brosch (p. 72)	All costs directly incurred by or allocated to the HECO Companies as a result of the proposed Change in Control, including transaction-related fees and expenses to seek and receive shareholder and regulatory approvals, shareholder litigation costs, business integration and transition expenses and other costs to achieve merger savings shall be recorded in non-operating expense accounts that are not reflected in utility operating income accounts and such recorded costs shall be excluded from any base rate increase requests and in determining annual utility earnings for Earning Sharing calculations within the decoupling mechanism.	#1 of Applicants Exhibit-55. Applicants contend that this is addressed by commitments 66 and 67. Discussed in CA Exhibit-29, beginning at 72, and reinforces the need for this condition.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
Ratemaking	RM8	Brosch (p. 75)	No costs arising from any Acquisition Premium or Goodwill amortization, impairment or related charge to expense or income shall be directly incurred by, recorded on the books of or allocated to the Hawaiian Electric Companies as a result of the proposed Change in Control.	#2 of Applicants Exhibit-55. Applicants assert that this is addressed by commitments 65, 70, and 71. Discussed in CA Exhibit-29, beginning at 72, and reiterates that the Consumer Advocate's proposed wording is superior to Applicants' version.
Ratemaking	RM9	Brosch (p. 79)	No costs arising from incentive compensation payable to any employee of NextEra Energy, Inc. or any NextEra subsidiary, including Hawaiian Electric Holdings (or successor) and Hawaiian Electric Companies, or affiliated entity shall be charged or allocated to any Operating Expense accounts or to any Plant in Service accounts of the Hawaiian Electric Companies.	#3 of Applicants Exhibit-55. Applicants assert that this condition is addressed by commitment 75. Discussed in CA Exhibit-29, beginning at 73. Applicants' proposed wording of their commitment does not address the Consumer Advocate's concern.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
Ratemaking	RM10	Brosch (p. 82)	No deferred tax assets recorded by the HECO Companies that arise from income tax net operating loss carryforwards, federal tax credit carryforwards or alternative minimum tax carryforwards shall be included in the rate base of the HECO Companies within either future base rate case filings or Rate Base Return on Investment decoupling filings that are submitted by the HECO Companies.	#4 of Applicants Exhibit-55. Applicants assert that this condition is addressed by commitment 64 and 69. Discussed in CA Exhibit-29, beginning at 77. The Consumer Advocate's concern is not addressed by Applicants' conditions.
Ratemaking	RM11	Brosch (p. 84)	No costs associated with aviation assets owned or leased and/or operated by NextEra, or any entity affiliated with NextEra, shall be charged or allocated to, or recorded to any Operating Expense accounts or to any Plant in Service accounts of the HECO Companies.	#5 of Applicants Exhibit-55. Applicants assert that the condition is addressed by commitment 76. Discussed in CA Exhibit-29, beginning at 73. Applicants' proposed wording of their commitment does not address the Consumer Advocate's concern.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
Ratemaking	RM12	Brosch (p. 86)	No costs for compensation of NextEra's most highly compensated "Named Executive Officers," for purposes of financial reporting, shall be assigned or allocated to any Operating Expense or Plant in Service accounts of the HECO Companies.	#6 of Applicants Exhibit-55. Applicants assert that the condition is addressed by commitment 77. Discussed in CA Exhibit-29, beginning at 73. Applicants' proposed wording of their commitment does not address the Consumer Advocate's concern.
Ratemaking	RM13	Brosch (p. 89)	No costs for insurance services or coverage from any NextEra Energy affiliated company shall be assigned or allocated to any Operating Expense or Plant in Service accounts of the HECO Companies.	#7 of Applicants Exhibit-55. Applicants assert that the condition is addressed by commitment 78. Discussed in CA Exhibit-29, beginning at 75. Applicants' proposed wording of their commitment does not address the Consumer Advocate's concern.
Ratemaking	RM14	Carver (p. 23)	Following the proposed Change in Control, the following terms and conditions will apply as a condition of continuing the current pension/OPEB tracking mechanisms: (a) NEE will maintain the HECO Companies' pension and OPEB plans and trusts on a stand-alone basis in	#228 of Applicants Exhibit-55. Applicants state that this condition is unnecessary because Applicants intend to maintain plans in current form. Not discussed in rebuttal.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			substantially the current form; (b) NEE will not transfer, spin off or commingle any of the HECO Companies' pension/OPEB assets with any comparable assets of NEE affiliates; (c) NEE will file an application with the Hawaii Public Utilities Commission formally seeking approval to transfer, spin off or commingle any HECO Companies' pension/OPEB assets with comparable assets of other NEE affiliates, should it desire to do so at some future date; and (d) NEE will file an application with the Hawaii Public Utilities Commission formally seeking approval prior to materially altering the HECO Companies' pension/OPEB plans or transferring HECO Companies employees to the NEE pension/retirement plans, should it desire to do so at some future date.	

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
Ratemaking	RM15	Nishina (p. 20)	Agreement that Hawaii customers will not be directly charged or allocated by NEE or NEE affiliates, including HECO Companies, any of the following types of costs: - Charitable contributions - Image or promotional Advertising/Marketing	#8 of Applicants Exhibit-55. Applicants contend that this condition is addressed by commitment 79. Discussed in CA Exhibit-24, beginning at 11. Applicants' proposed wording of their commitment does not address the Consumer Advocate's concern.
AFFILIATED TRANSACTIONS				
Affiliated Transactions	AT1	Carver (p. 11)	In all future transactions between the Hawaiian Electric Companies and 1) NextEra Energy Inc. or 2) NextEra Energy, Inc. affiliates, other than Florida Power & Light Company ("FPL"); transactions involving the transfer of goods or services shall be priced asymmetrically to the benefit of the Hawaiian Electric Companies and their ratepayers. Asymmetrical pricing means that the Hawaiian Electric Companies always pay the lesser of cost-based or market-based prices, whenever purchasing goods or	#21 of Applicants Exhibit-55. Rejected by Applicants. Discussed in CA Exhibit-30, starting at 8. Asymmetrical pricing will be necessary to protect consumers' interests from possible transactions between affiliates that could disadvantage Hawaii consumers.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			services from an affiliated entity (other than FP&L), and that Hawaiian Electric Companies always receive the higher of cost-based or market-based prices whenever selling goods or services to such affiliates. Transactions between the HECO Companies and FPL, both regulated entities, will be at cost.	
Affiliated Transactions	AT2	Carver (p. 11)	Within 90 days after the closing of the proposed Change in Control, the HECO Companies shall provide the Consumer Advocate a draft Hawaii-specific Cost Allocation Manual ("CAM"), containing detailed affiliate transaction policies, practices and guidelines (including., asymmetrical pricing for transactions between regulated and unregulated affiliates, direct charging of corporate costs when possible, apportionment of common or shared costs using direct measures of cost causation when	#22 of Applicants Exhibit-55. Applicants contend that commitment 50 addresses this condition. As discussed in CA Exhibit-30, starting at page 15, the use of the existing FPL CAM on an interim basis may be necessary, but if the transaction is approved, further analysis will be required to determine the need for a Hawaii specific CAM.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			identifiable, and allocation of shared services costs using general allocation techniques as necessary among all benefiting affiliated entities) designed to protect against cross-subsidization of NEE affiliates by the HECO Companies. Representatives of the HECO Companies and the Consumer Advocate shall collaboratively review, discuss and revise the draft CAM with the objective of filing a joint CAM recommendation for consideration and approval by the Commission. Pending Commission approval, NEE will apply the FPL CAM methodologies and approaches for all transactions between NEE affiliates and the HECO Companies.	
Affiliated Transactions	AT3	Carver (p. 41-42)	In all general rate cases following the proposed Change in Control, the respective filing of each of the HECO Companies shall include	#23 of Applicants Exhibit-55. Applicants assert that this condition is addressed by commitment 51. As discussed

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			direct testimony and exhibits explaining and quantifying all affiliate transactions of each type. Additionally, testimony shall include information needed to explain and reconcile the proposed amount of test year shared services costs charged or allocated by FPL or any other NextEra affiliate in comparison to the actual costs charged/allocated to the HECO Companies by HEI in calendar year 2014, escalated by GDPPI thereafter.	in CA Exhibit-30, starting at 4, commitment 51 by itself is insufficient and, if Applicants are confident in the ability to be more efficient post merger, Applicants should not object to the recommended condition.
Affiliated Transactions	AT4	Carver (p. 12)	Following the proposed Change in Control, NEE and FPL shall cooperatively provide information requested by the Commission and the Consumer Advocate supporting the need for and basis of corporate and shared services costs directly charged and/or allocated to the HECO Companies. The information shall include, but not be limited to: detailed overhead loading	#24 of Applicants Exhibit-55. Applicants contend that the package of commitments 47 – 52 partially addresses the condition. Not specifically addressed in CA rebuttal.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			factor development and application; source documentation and calculations supporting the development of allocation factors based on direct measures of cost causation or general allocation factors (e.g., Massachusetts Formula); sufficiently detailed data to allow for testing, analysis and verification of corporate and shared services costs allocated to the HECO Companies, including quantification support for alternative allocation factor applications; access to studies and detailed support underlying any rent compensation calculations used in affiliate overhead loading rate charges or for purposes of allocating FPL or NEE affiliate-owned office space to affiliates via corporate or shared services allocations; information explaining the basis for the inclusion or exclusion of other NEE affiliates from the	

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			allocation of specific corporate costs or shared services cost pools; and accounting, financial and operational data necessary to test and analyze the basis for and reasonableness of including or excluding the HECO Companies or other NEE affiliates from participation in the allocation of corporate or shared services costs.	
	AT5	Carver (p. 12)	The HECO Companies shall file a report annually with the Commission and the Consumer Advocate disclosing the nature of the transactions and the annual value of those activities between each HECO Company and each NEE affiliate.	#25 of Applicants Exhibit-55. Applicants addressed with commitment 49. Since Applicants have accepted, not specifically discussed in CA rebuttal.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
	AT6	Carver (p. 44)	In determining annual utility earnings for Earning Sharing calculations within the decoupling mechanism in all periods prior to the completion of each utility's next general rate case, the amount of shared services costs charged or allocated by FPL or any other NextEra Affiliate shall not exceed the actual costs charged/allocated to the HECO Companies by HEI in calendar year 2014, escalated by GDPPI thereafter.	#26 of Applicants Exhibit-55. Applicants addressed with commitment 52. Since Applicants have accepted, not specifically discussed in CA rebuttal.
Affiliated Transactions	AT7	Carver (pp. 57-62)	Changes to the 1982 Agreement	Not addressed on Applicants Exhibit-55, but discussed by Applicants' witnesses. Beginning on page 16 of CA Exhibit-30, the remaining differences and issues are discussed.
Affiliated Transactions	AT8	Nishina (p. 37-38)	Agreement that 24 months after the transaction has been consummated, NEE/HECO Companies will participate in a study that is commissioned by the Commission and paid for by	#41 of Applicants Exhibit-55. Applicants reject and contend that commitments 41 through 46 and 47 through 52 address this condition. Discussed in CA Exhibit-24, beginning at 16.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			NEE/HECO similar to the Dennis Thomas Report.	Applicants' commitments will not address the concern and the proposed study, at shareholders' expense should be conducted.
RELIABILITY				
Reliability	RE1	Chang (pp. 26-27)	NextEra will develop, within six months of the Merger's closing, a long-term plan to achieve first quartile reliability performance as established through benchmarking studies. The reliability performance metrics should include standard reliability indices such as SAIDI, SAIFI, and CAIDI and should be based on IEEE 2.5 beta methodology. The plan should include budgets with supporting justification and analysis to ensure that the plan can achieve these first quartile goals at reasonable cost.	#270 of Applicants Exhibit-55. Applicants contend that commitment 40 addresses. Discussed in CA Exhibit-32, beginning at 7.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
EMPLOYMENT				
Employment	EM1	Chang (p. 32)	NextEra will provide workforce estimates and supporting analysis to identify the specific staff requirements necessary to achieve post-merger reliability commitments.	#271 of Applicants Exhibit-55. Applicants reject and contend that commitments 40 and 41 addresses. CA discusses in CA Exhibit-32, beginning at 17.
Employment	EM2	Chang (p. 32)	NextEra will provide shareholder funding to implement a workforce development plan between the Hawaiian Electric Companies and local Hawaii institutions similar to FPF's partnerships in Florida to foster energy sector workforce development.	#87 of Applicants Exhibit-55. Applicants contend that commitment 7 addresses. CA discusses in CA Exhibit-32, at 17.
Employment	EM3	Nishina (pp. 24-25)	If a HECO Companies' employee is hired, transferred, or otherwise moves to NEE or one of its affiliates/subsidiaries, the following guidelines should be followed: 1) the NEE affiliate will contribute an amount equal to that employee's fully loaded annual compensation to a fund that will return that benefit to customers; 2) the employee that is moving will not make available	#27 of Applicants Exhibit-55. Applicants reject this condition asserting that it restricts an employee's career. Discussed in CA Exhibit-24, beginning at 12. Applicants' concerns are refuted and the need for the condition is supported.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			or take information to the affiliate that is not publicly accessible; and 3) not use or rely upon intellectual property (to benefit the affiliate) that is protected by or in the process of being protected by the HECO Companies.	
TRANSFORMATIONAL				
Transformational	TR1	Nishina (pp. 16-18)	NEE/HECO Companies to supply monies for an "investment fund" (akin to CIAC) for transformational capital investments - $10 million each for Lanai and Molokai - $25 million each for Maui and Hawaii - $40 million for Oahu - investment should be made within seven years of the transaction completion	#207 of Applicants Exhibit-55. Applicants reject and contend that this condition is partially addressed by commitment 14. Discussed in CA Exhibit-24, beginning at 21. Applicants' commitment 14 falls well short and Applicants' proposal is that the funding will also be the source for low-income programs, which means even less for transformational investments.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
Transformational	TR2	Nishina (pp. 18-19)	Agreement not to seek recovery of remaining net book value of retired assets to facilitate transformational efforts - Retirement of Honolulu units 8 & 9 - Retirement of Waiau units 3 & 4 - Retirement of Shipman units 3 & 4 - Retirement of Kahului units 1 through 4 - old meters and obsolete back office systems that will be replaced by AMI infrastructure	#208 of Applicants Exhibit-55. Applicants reject and claim that it is confiscatory and a disincentive for asset retirement. Discussed in CA Exhibit-24, beginning at 24. The proposed condition was identified as a means by which Applicants could demonstrate their commitment to Hawaii and the customers, as well as balancing shareholder and customer interests.
COMPETITION				
Competition	CO1	Chang (p. 47-48)	Pending the completion of an independent Commission investigation into updating the competitive bidding framework: • Any NextEra affiliate and Hawaiian Electric Companies' operating entity should not both be allowed to participate in the same competitive RFP.	#146 of Applicants Exhibit-55. Applicants contend that commitments 43 through 46 partially address. Discussed in CA Exhibit-32, at 22.

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			Only one or the other entity should participate. • The HECO Companies and NextEra should not directly or indirectly communicate on matters of planning or procurement efforts. Measures to prevent improper communication should be presented to the Commission for review and approval, and an annual independent certification of compliance should be required. • The HECO Companies or any NextEra affiliate should submit its bid in advance of any procurement deadline to ensure that its bid does not reflect information inappropriately gained from competitors' bids. • Any NextEra proposal should be submitted under "open book" requirements to allow the Commission and the Consumer Advocate to review	

Category	#	Sponsor/ Source	Description	Applicants' response (source: Applicants Exhibit-55) and Consumer Advocate's Assessment of Applicants' Response
			its inputs and assumptions. If a NextEra proposal is selected, a final cost report should be required.	
Competition	CO2	Nishina (pp. 41-42)	There will be no utility procedure or process that will unfairly direct utility customers to an unregulated affiliate or suggest that an affiliate's services is part of the regulated company's service offerings. The regulated utility company should avoid any advertising or informational brochures that might be interpreted by customers or potential customers to mean that affiliated goods or services are required or available as part of regulated utility services.	#28 of Applicants Exhibit-55. Applicants assert that this condition is unnecessary and unclear. Discussed in CA Exhibit-24, beginning at 15. It is pointed out that this type of condition already exists in FPL's service territory, as well as other jurisdictions. The condition is reasonable and appropriate to protect the customers' and public interest.

Decision 06-12-029

AFFILIATE TRANSACTION RULES APPLICABLE LARGE CALIFORNIA ENERGY UTILITIES

Affiliate Transaction Rules Applicable to Large California Energy Utilities

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Affiliate Transaction Rules Applicable to Large California Energy Utilities

I. Definitions

Unless the context otherwise requires, the following definitions govern the construction of these Rules:

A. **"Affiliate"** means any person, corporation, utility, partnership, or other entity 5 per cent or more of whose outstanding securities are owned, controlled, or held with power to vote, directly or indirectly either by a utility or any of its subsidiaries, or by that utility's controlling corporation and/or any of its subsidiaries as well as any company in which the utility, its controlling corporation, or any of the utility's affiliates exert substantial control over the operation of the company and/or indirectly have substantial financial interests in the company exercised through means other than ownership. For purposes of these Rules, "substantial control" includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A direct or indirect voting interest of 5% or more by the utility in an entity's company creates a rebuttable presumption of control.

For purposes of this Rule, "affiliate" shall include the utility's parent or holding company, or any company which directly or indirectly owns, controls, or holds the power to vote 10% or more of the outstanding voting securities of a utility (holding company), to the extent the holding company is engaged in the provision of products or services as set out in Rule II B. However, in its compliance plan filed pursuant to Rule VI, the utility shall demonstrate both the specific mechanism and procedures that the utility and holding company have in place to assure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules. Examples include but are not limited to specific mechanisms and procedures to assure the Commission that the utility will not use the holding company, another utility affiliate not covered by these Rules, or a consultant or contractor as a vehicle to (1) disseminate information transferred to them by the utility to an affiliate covered by these Rules in contravention of these Rules, (2) provide services to its affiliates covered by these Rules in contravention of these Rules or (3) to transfer employees to its affiliates

covered by these Rules in contravention of these Rules. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of these specific mechanisms and procedures to ensure that the utility is not utilizing the holding company or any of its affiliates not covered by these Rules as a conduit to circumvent any of these Rules. Regulated subsidiaries of a utility, defined as subsidiaries of a utility, the revenues and expenses of which are subject to regulation by the Commission and are included by the Commission in establishing rates for the utility, are not included within the definition of affiliate. However, these Rules apply to all interactions any regulated subsidiary has with other affiliated entities covered by these rules.

B. **"Commission"** means the California Public Utilities Commission or its succeeding state regulatory body.

C. **"Customer"** means any person or corporation, as defined in Sections 204, 205 and 206 of the California Public Utilities Code, that is the ultimate consumer of goods and services.

D. **"Customer Information"** means non-public information and data specific to a utility customer which the utility acquired or developed in the course of its provision of utility services.

E. **"FERC"** means the Federal Energy Regulatory Commission.

F. **"Fully Loaded Cost"** means the direct cost of good or service plus all applicable indirect charges and overheads.

G. **"Utility"** means any public utility subject to the jurisdiction of the Commission as an Electrical Corporation or Gas Corporation, as defined in California Public Utilities Code Sections 218 and 222, and with gross annual operating revenues in California of $1 billion or more.

H. **"Resource Procurement"** means the investment in and the production or acquisition of the energy facilities, supplies, and other energy products or services necessary for California public utility gas corporations and California public utility electrical corporations to meet their statutory obligation to serve their customers.

II. Applicability

A. These Rules shall apply to California public utility gas corporations and California public utility electrical corporations, subject to regulation by the California Public Utilities Commission and with gross annual operating revenues in California of $1 billion or more.

B. For purposes of a combined gas and electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity, unless specifically exempted below. For purposes of an electric utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses electricity or the provision of services that relate to the use of electricity. For purposes of a gas utility, these Rules apply to all utility transactions with affiliates engaging in the provision of a product that uses gas or the provision of services that relate to the use of gas. However, regardless of the foregoing, where explicitly provided, these Rules also apply to a utility's parent holding company and to all of its affiliates, whether or not they engage in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity.

C. No holding company nor any utility affiliate, whether or not engaged in the provision of a product that uses gas or electricity or the provision of services that relate to the use of gas or electricity, shall knowingly:

1. direct or cause a utility to violate or circumvent these Rules, including but not limited to the prohibitions against the utility providing preferential treatment, unfair competitive advantages or non-public information to its affiliates;

2. aid or abet a utility's violation of these Rules; or

3. be used as a conduit to provide non-public information to a utility's affiliate.

D. These Rules apply to transactions between a Commission-regulated utility and another affiliated utility, unless specifically modified by the Commission in addressing a separate application to merge or otherwise conduct joint ventures related to regulated services.

E. These Rules do not apply to the exchange of operating information, including the disclosure of customer information to its FERC-regulated affiliate to the extent such information is required by the affiliate to schedule and confirm nominations for the interstate transportation of natural gas, between a utility and its FERC-regulated affiliate, to the extent that the affiliate operates an interstate natural gas pipeline. These Rules do not apply to transactions between an electric utility and an affiliate providing broadband over power lines (BPL).

F. **Existing Rules**: Existing Commission rules for each utility and its parent holding company shall continue to apply except to the extent they conflict with these Rules. In such cases, these Rules shall supersede prior rules and guidelines, provided that nothing herein shall supersede the Commission's regulatory framework for broadband over power lines (BPL) adopted in D. 06-04-070 nor shall preclude (1) the Commission from adopting other utility-specific guidelines; or (2) a utility or its parent holding company from adopting other utility-specific guidelines, with advance Commission approval.

G. **Civil Relief**: These Rules shall not preclude or stay any form of civil relief, or rights or defenses thereto, that may be available under state or federal law.

H. These Rules should be interpreted broadly, to effectuate our stated objectives of fostering competition and protecting consumer interests. If any provision of these Rules, or the application thereof to any person, company, or circumstance, is held invalid, the remainder of the Rules, or the application of such provision to other persons, companies, or circumstances, shall not be affected thereby.

III. Nondiscrimination

A. **No Preferential Treatment Regarding Services Provided by the Utility**: Unless otherwise authorized by the Commission or the FERC, or permitted by these Rules, a utility shall not:

1. represent that, as a result of the affiliation with the utility, its affiliates or customers of its affiliates will receive any different treatment by the utility than the treatment the utility provides to other, unaffiliated companies or their customers; or

2. provide its affiliates, or customers of its affiliates, any preference (including but not limited to terms and conditions, pricing, or timing) over non-affiliated suppliers or their customers in the provision of services provided by the utility.

B. **Affiliate Transactions**: Transactions between a utility and its affiliates shall be limited to tariffed products and services, to the sale of goods, property, products or services made generally available by the utility or affiliate to all market participants through an open, competitive bidding process, to the provision of information made generally available by the utility to all market participants, to Commission-approved resource procurement by the utility, or as provided for in Rules V D (joint purchases), V E (corporate support) and VII (new products and services) below.

1. **Resource Procurement.** No utility shall engage in resource procurement, as defined in these Rules, from an affiliate without prior approval from the Commission. Blind transactions between a utility and its affiliate, defined as those transactions in which neither party knows the identity of the counterparty until the transaction is consummated, are exempted from this Rule. A transaction shall be deemed to have prior Commission approval (a) before the effective date of this Rule, if authorized by the Commission specifically or through the delegation of authority to Commission staff or (b) after the effective date of this Rule, if authorized by the Commission generally or specifically or through the delegation of authority to Commission staff.

2. **Provision of Supply, Capacity, Services or Information**: Except as provided for in Rules V D, V E, and VII, a utility shall provide access to utility information, services, and unused capacity or

supply on the same terms for all similarly situated market participants. If a utility provides supply, capacity, services, or information to its affiliate(s), it shall contemporaneously make the offering available to all similarly situated market participants, which include all competitors serving the same market as the utility's affiliates.

3. **Offering of Discounts**: Except when made generally available by the utility through an open, competitive bidding process, if a utility offers a discount or waives all or any part of any other charge or fee to its affiliates, or offers a discount or waiver for a transaction in which its affiliates are involved, the utility shall contemporaneously make such discount or waiver available to all similarly situated market participants. The utilities should not use the "similarly situated" qualification to create such a unique discount arrangement with their affiliates such that no competitor could be considered similarly situated. All competitors serving the same market as the utility's affiliates should be offered the same discount as the discount received by the affiliates. A utility shall document the cost differential underlying the discount to its affiliates in the affiliate discount report described in Rule III F 7 below.

4. **Tariff Discretion**: If a tariff provision allows for discretion in its application, a utility shall apply that tariff provision in the same manner to its affiliates and other market participants and their respective customers.

5. **No Tariff Discretion**: If a utility has no discretion in the application of a tariff provision, the utility shall strictly enforce that tariff provision.

6. **Processing Requests for Services Provided by the Utility**: A utility shall process requests for similar services provided by the utility in the same manner and within the same time for its affiliates and for all other market participants and their respective customers.

C. **Tying of Services Provided by a Utility Prohibited**: A utility shall not condition or otherwise tie the provision of any services provided by the utility, nor the availability of discounts of rates or other charges or fees, rebates, or waivers of terms and conditions of any services provided by the utility, to the taking of any goods or services from its affiliates.

D. **No Assignment of Customers**: A utility shall not assign customers to which it currently provides services to any of its affiliates, whether by default, direct assignment, option or by any other means, unless that means is equally available to all competitors.

E. **Business Development and Customer Relations**: Except as otherwise provided by these Rules, a utility shall not:

1. provide leads to its affiliates;

2. solicit business on behalf of its affiliates;

3. acquire information on behalf of or to provide to its affiliates;

4. share market analysis reports or any other types of proprietary or nonpublicly available reports, including but not limited to market, forecast, planning or strategic reports, with its affiliates;

5. request authorization from its customers to pass on customer information exclusively to its affiliates;

6. give the appearance that the utility speaks on behalf of its affiliates or that the customer will receive preferential treatment as a consequence of conducting business with the affiliates; or

7. give any appearance that the affiliate speaks on behalf of the utility.

F. **Affiliate Discount Reports**: If a utility provides its affiliates a discount, rebate, or other waiver of any charge or fee associated with products or services provided by the utility, the utility shall, within 24 hours of the time at which the product or service provided by the utility is so provided, post a notice on its electronic bulletin board providing the following information:

1. the name of the affiliate involved in the transaction;

2. the rate charged;

3. the maximum rate;

4. the time period for which the discount or waiver applies;

5. the quantities involved in the transaction;

6. the delivery points involved in the transaction;

7. any conditions or requirements applicable to the discount or waiver, and a documentation of the cost differential underlying the discount as required in Rule III B 2 above; and

8. procedures by which a nonaffiliated entity may request a comparable offer.

A utility that provides an affiliate a discounted rate, rebate, or other waiver of a charge or fee associated with services provided by the utility shall maintain, for each billing period, the following information:

9. the name of the entity being provided services provided by the utility in the transaction;

10. the affiliate's role in the transaction (i.e., shipper, marketer, supplier, seller);

11. the duration of the discount or waiver;

12. the maximum rate;

13. the rate or fee actually charged during the billing period; and

14. the quantity of products or services scheduled at the discounted rate during the billing period for each delivery point.

All records maintained pursuant to this provision shall also conform to FERC rules where applicable.

IV. Disclosure and Information

A. **Customer Information**: A utility shall provide customer information to its affiliates and unaffiliated entities on a strictly non-discriminatory basis, and only with prior affirmative customer written consent.

B. **Non-Customer Specific Non-Public Information**: A utility shall make non-customer specific non-public information, including but not limited to information about a utility's natural gas or electricity purchases, sales, or operations or about the utility's gas-related goods or services and electricity-related goods or services, available to the utility's affiliates only if the utility makes that information contemporaneously available to all other service providers on the same terms and conditions, and keeps the information open to public inspection. Unless otherwise provided by these Rules, a utility continues to be bound by all Commission-adopted pricing and reporting guidelines for such transactions. A utility is also permitted to exchange proprietary information on an exclusive basis with its affiliates, provided the utility follows all Commission-adopted pricing and reporting guidelines for such transactions, and it is necessary to exchange this information in the provision of the corporate support services permitted by Rule V E below. The affiliate's use of such proprietary information is limited to use in conjunction with the permitted corporate support services, and is not permitted for any other use. Nothing in this Rule precludes the exchange of information pursuant to D.97-10-031. Nothing in this Rule is intended to limit the Commission's right to information under Public Utilities Code Sections 314 and 581.

C. **Service Provider Information**: Except upon request by a customer or as otherwise authorized by the Commission or another governmental body, a utility shall not provide its customers with any list of service providers, which includes or identifies the utility's affiliates, regardless of whether such list also includes or identifies the names of unaffiliated entities.

D. **Supplier Information**: A utility may provide non-public information and data which has been received from unaffiliated suppliers to its affiliates or non-affiliated entities only if the utility first obtains written affirmative authorization to do so from the supplier. A utility shall not actively solicit the release of such information exclusively to its own

affiliate in an effort to keep such information from other unaffiliated entities.

E. **Affiliate-Related Advice or Assistance**: Except as otherwise provided in these Rules, a utility shall not offer or provide customers advice or assistance with regard to its affiliates or other service providers.

F. **Record-Keeping**: A utility shall maintain contemporaneous records documenting all tariffed and nontariffed transactions with its affiliates, including but not limited to, all waivers of tariff or contract provisions, all discounts, and all negotiations of any sort between the utility and its affiliate whether or not they are consummated. A utility shall maintain such records for a minimum of three years and longer if this Commission or another government agency so requires. For consummated transactions, the utility shall make such final transaction documents available for third party review upon 72 hours' notice, or at a time mutually agreeable to the utility and third party.

If D.97-06-110 is applicable to the information the utility seeks to protect, the utility should follow the procedure set forth in D.97-06-110, except that the utility should serve the third party making the request in a manner that the third party receives the utility's D.97-06-110 request for confidentiality within 24 hours of service.

G. **Maintenance of Affiliate Contracts and Related Bids**: A utility shall maintain a record of all contracts and related bids for the provision of work, products or services between the utility and its affiliates for no less than a period of three years, and longer if this Commission or another government agency so requires.

H. **FERC Reporting Requirements**: To the extent that reporting rules imposed by the FERC require more detailed information or more expeditious reporting, nothing in these Rules shall be construed as modifying the FERC rules.

V. Separation

A. **Corporate Entities**: A utility, its parent holding company, and its affiliates shall be separate corporate entities.

B. **Books and Records**: A utility, its parent holding company, and its affiliates shall keep separate books and records.

1. Utility books and records shall be kept in accordance with applicable Uniform System of Accounts (USOA) and Generally Accepted Accounting Procedures (GAAP).

2. The books and records of a utility's parent holding company and affiliates shall be open for examination by the Commission and its staff consistent with the provisions of Public Utilities Code Sections 314 and 701, the conditions in the Commission's orders authorizing the utilities' holding companies and/or mergers and these Rules.

C. **Sharing of Plant, Facilities, Equipment or Costs**: A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems, except to the extent appropriate to perform shared corporate support functions permitted under Rule V E of these Rules. Physical separation required by this rule shall be accomplished preferably by having office space in a separate building, or, in the alternative, through the use of separate elevator banks and/or security-controlled access. This provision does not preclude a utility from offering a joint service provided this service is authorized by the Commission and is available to all non-affiliated service providers on the same terms and conditions (e.g., joint billing services pursuant to D.97-05-039).

D. **Joint Purchases:** To the extent not precluded by any other Rule, the utilities and their affiliates may make joint purchases of good and services, but not those associated with the traditional utility merchant function. For purpose of these Rules, to the extent that a utility is engaged in the marketing of the commodity of electricity or natural gas to customers, as opposed to the marketing of transmission and distribution services, it is engaging in merchant functions. Examples of permissible joint purchases include joint purchases of office supplies and telephone services. Examples of joint purchases not permitted include gas and electric purchasing for resale, purchasing of gas transportation and storage capacity, purchasing of electric transmission, systems operations, and marketing. The utility must insure that all joint purchases are priced, reported, and conducted in a manner that permits clear identification of the utility and affiliate

portions of such purchases, and in accordance with applicable Commission allocation and reporting rules.

E. **Corporate Support**: As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems and personnel, as further specified below. Any shared support shall be priced, reported and conducted in accordance with the Separation and Information Standards set forth herein, as well as other applicable Commission pricing and reporting requirements.

As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates. In the compliance plan, a corporate officer from the utility and holding company shall verify the adequacy of the specific mechanisms and procedures in place to ensure the utility follows the mandates of this paragraph, and to ensure the utility is not utilizing joint corporate support services as a conduit to circumvent these Rules.

Examples of services that may be shared include: payroll, taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management. However, if a utility and its parent holding company share any key officers after 180 days following the effective date of the decision adopting these Rule modifications, then the following services shall no longer be shared: regulatory affairs, lobbying, and all legal services except those necessary to the provision of shared services still authorized. For purposes of this Rule, key officers are the Chair of the entire corporate enterprise, the President at the utility and at its holding company parent, the chief executive officer at each, the chief financial officer at each, and the chief regulatory officer at each, or in each case, any and all officers whose responsibilities are the functional equivalent of the foregoing.

Examples of services that may not be shared include: employee recruiting, engineering, hedging and financial derivatives and arbitrage services, gas and electric purchasing for resale, purchasing of

gas transportation and storage capacity, purchasing of electric transmission, system operations, and marketing. However, if a utility and its parent holding company share any key officers (as defined in the preceding paragraph) after 180 days following the effective date of the decision adopting these Rule modifications, then the following services shall no longer be shared: regulatory affairs, lobbying, and all legal services except those necessary to the provision of shared services still authorized.

F. **Corporate Identification and Advertising**:

1. A utility shall not trade upon, promote, or advertise its affiliate's affiliation with the utility, nor allow the utility name or logo to be used by the affiliate or in any material circulated by the affiliate, unless it discloses in plain legible or audible language, on the first page or at the first point where the utility name or logo appears that:

   a. the affiliate "is not the same company as [i.e. PG&E, Edison, the Gas Company, etc.], the utility,";

   b. the affiliate is not regulated by the California Public Utilities Commission; and

   c. "you do not have to buy [the affiliate's] products in order to continue to receive quality regulated services from the utility." The application of the name/logo disclaimer is limited to the use of the name or logo in California.

2. A utility, through action or words, shall not represent that, as a result of the affiliate's affiliation with the utility, its affiliates will receive any different treatment than other service providers.

3. A utility shall not offer or provide to its affiliates advertising space in utility billing envelopes or any other form of utility customer written communication unless it provides access to all other unaffiliated service providers on the same terms and conditions.

4. A utility shall not participate in joint advertising or joint marketing with its affiliates. This prohibition means that utilities may not engage in activities which include, but are not limited to the following:

a. A utility shall not participate with its affiliates in joint sales calls, through joint call centers or otherwise, or joint proposals (including responses to requests for proposals (RFPs)) to existing or potential customers. At a customer's unsolicited request, a utility may participate, on a nondiscriminatory basis, in non-sales meetings with its affiliates or any other market participant to discuss technical or operational subjects regarding the utility's provision of transportation service to the customer;

b. Except as otherwise provided for by these Rules, a utility shall not participate in any joint activity with its affiliates. The term "joint activities" includes, but is not limited to, advertising, sales, marketing, communications and correspondence with any existing or potential customer;

c. A utility shall not participate with its affiliates in trade shows, conferences, or other information or marketing events held in California.

5. A utility shall not share or subsidize costs, fees, or payments with its affiliates associated with research and development activities or investment in advanced technology research.

G. **Employees**:

1. Except as permitted in Rule V E (corporate support), a utility and its affiliates shall not jointly employ the same employees, This Rule prohibiting joint employees also applies to Board Directors, and corporate officers except for the following circumstances: In instances when this Rule is applicable to holding companies, any board member or corporate officer may serve on the holding company and with either the utility or affiliate (but not both) to the extent consistent with Rule V E (corporate support). Where the utility is a multi-state utility, is not a member of a holding company structure, and assumes the corporate governance functions for the affiliates, the prohibition against any board member or corporate officer of the utility also serving as a board member or corporate officer of an affiliate shall only apply to affiliates that operate within California. In the case of shared directors and officers, a corporate officer from the utility and holding company shall describe and verify in the utility's compliance plan required by Rule VI the adequacy of the specific mechanisms and procedures in place to ensure that the utility is not utilizing shared officers and directors as a conduit to circumvent any of these Rules. In its compliance plan, the

utility shall list all shared directors and officers between the utility and affiliates. No later than 30 days following a change to this list, the utility shall notify the Commission's Energy Division and the parties on the service list of R.97-04-011/I.97-04-012 of any change to this list.

2. All employee movement between a utility and its affiliates shall be consistent with the following provisions:

   a. A utility shall track and report to the Commission all employee movement between the utility and affiliates. The utility shall report this information annually pursuant to our Affiliate Transaction Reporting Decision, D.93-02-016, 48 CPUC2d 163, 171-172 and 180 (Appendix A, Section I and Section II H.).

   b. Once an employee of a utility becomes an employee of an affiliate, the employee may not return to the utility for a period of one year. This Rule is inapplicable if the affiliate to which the employee transfers goes out of business during the one-year period. In the event that such an employee returns to the utility, such employee cannot be retransferred, reassigned, or otherwise employed by the affiliate for a period of two years. Employees transferring from the utility to the affiliate are expressly prohibited from using information gained from the utility in a discriminatory or exclusive fashion, to the benefit of the affiliate or to the detriment of other unaffiliated service providers.

   c. When an employee of a utility is transferred, assigned, or otherwise employed by the affiliate, the affiliate shall make a one-time payment to the utility in an amount equivalent to 25% of the employee's base annual compensation, unless the utility can demonstrate that some lesser percentage (equal to at least 15%) is appropriate for the class of employee included. In the limited case where a rank-and-file (non-executive) employee's position is eliminated as a result of electric industry restructuring, a utility may demonstrate that no fee or a lesser percentage than 15% is appropriate. All such fees paid to the utility shall be accounted for in a separate memorandum account to track them for future ratemaking treatment (i.e. credited to the Electric Revenue Adjustment Account or the Core and Noncore Gas Fixed Cost Accounts, or other ratemaking treatment, as appropriate), on an annual basis, or as otherwise necessary to ensure that the utility's ratepayers receive the fees. This transfer payment provision will not apply to clerical workers. Nor will it apply to the initial transfer

of employees to the utility's holding company to perform corporate support functions or to a separate affiliate performing corporate support functions, provided that that transfer is made during the initial implementation period of these rules or pursuant to a § 851 application or other Commission proceeding. However, the rule will apply to any subsequent transfers or assignments between a utility and its affiliates of all covered employees at a later time.

d. Any utility employee hired by an affiliate shall not remove or otherwise provide information to the affiliate which the affiliate would otherwise be precluded from having pursuant to these Rules.

e. A utility shall not make temporary or intermittent assignments, or rotations to its energy marketing affiliates. Utility employees not involved in marketing may be used on a temporary basis (less than 30% of an employee's chargeable time in any calendar year) by affiliates not engaged in energy marketing only if:

   i. All such use is documented, priced and reported in accordance with these Rules and existing Commission reporting requirements, except that when the affiliate obtains the services of a non-executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 10% of direct labor cost, or fair market value. When the affiliate obtains the services of an executive employee, compensation to the utility should be priced at a minimum of the greater of fully loaded cost plus 15% of direct labor cost, or fair market value.

   ii. Utility needs for utility employees always take priority over any affiliate requests;

   iii. No more than 5% of full time equivalent utility employees may be on loan at a given time;

   iv. Utility employees agree, in writing, that they will abide by these Affiliate Transaction Rules; and

   v. Affiliate use of utility employees must be conducted pursuant to a written agreement approved by appropriate utility and affiliate officers.

H. **Transfer of Goods and Services**: To the extent that these Rules do not prohibit transfers of goods and services between a utility and its affiliates, and except for as provided by Rule V.G.2.e, all such transfers shall be subject to the following pricing provisions:

1. Transfers from the utility to its affiliates of goods and services produced, purchased or developed for sale on the open market by the utility will be priced at fair market value.

2. Transfers from an affiliate to the utility of goods and services produced, purchased or developed for sale on the open market by the affiliate shall be priced at no more than fair market value.

3. For goods or services for which the price is regulated by a state or federal agency, that price shall be deemed to be the fair market value, except that in cases where more than one state commission regulates the price of goods or services, this Commission's pricing provisions govern.

4. Goods and services produced, purchased or developed for sale on the open market by the utility will be provided to its affiliates and unaffiliated companies on a nondiscriminatory basis, except as otherwise required or permitted by these Rules or applicable law.

5. Transfers from the utility to its affiliates of goods and services not produced, purchased or developed for sale by the utility will be priced at fully loaded cost plus 5% of direct labor cost.

6. Transfers from an affiliate to the utility of goods and services not produced, purchased or developed for sale by the affiliate will be priced at the lower of fully loaded cost or fair market value.

VI. Regulatory Oversight

A. **Compliance Plans**: No later than June 30, 2007, each utility shall file a compliance plan by advice letter with the Energy Division of the Commission. The compliance plan shall include:

1. A list of all affiliates of the utility, as defined in Rule I A of these Rules, and for each affiliate, its purpose or activities, and whether the utility claims that Rule II B makes these Rules applicable to the affiliate;

2. A demonstration of the procedures in place to assure compliance with these Rules.

The utility's compliance plan shall be in effect between the filing and a Commission determination of the advice letter. A utility shall file a compliance plan annually thereafter by advice letter where there is some change in the compliance plan (i.e., when there has been a change in the purpose or activities of an affiliate, a new affiliate has been created, or the utility has changed the compliance plan for any other reason).

B. **New Affiliate Compliance Plans**: Upon the creation of a new affiliate the utility shall immediately notify the Commission of the creation of the new affiliate, as well as posting notice on its electronic bulletin board. No later than 60 days after the creation of this affiliate, the utility shall file an advice letter with the Energy Division of the Commission. The advice letter shall state the affiliate's purpose or activities, whether the utility claims that Rule II B makes these Rules applicable to the affiliate, and shall include a demonstration to the Commission that there are adequate procedures in place that will ensure compliance with these Rules.

C. **Affiliate Audit**: The Commission's Energy Division shall have audits performed biennially by independent auditors. The audits shall cover the last two calendar years which end on December 31, and shall verify that the utility is in compliance with the Rules set forth herein. The Energy Division shall post the audit reports on the Commission's web site. The audits shall be at shareholder expense.

D. **Witness Availability**: Affiliate officers and employees shall be made available to testify before the Commission as necessary or required, without subpoena, consistent with the provisions of Public Utilities Code Sections 314 and 701, the conditions in the Commission's orders authorizing the utilities' holding companies and/or mergers and these Rules.

E. **Officer Certification.** No later than March 31 of each year, the key officers of a utility and its parent holding company, as defined in Rule V E (corporate support), shall certify to the Energy Division of the Commission in writing under penalty of perjury that each has personally complied with these Rules during the prior calendar year. The certification shall state:

I, [name], hold the office of [title] at [name of utility or holding company], and occupied this position from January 1, [year] to December 31[year],

I hereby certify that I have reviewed the Affiliate Transaction Rules Applicable to Large California Energy Utilities of the California Public Utilities Commission and I am familiar with the provisions therein. I further certify that for the above period, I followed these Rules and am not aware of any violations of them, other than the following: [list or state "none"].

I swear/affirm these representations under penalty of perjury of the laws of the State of California.
_____[Signature]
Executed at_____[City], County of _____, on _____[Date]

VII. Utility Products and Services

A. **General Rule:** Except as provided for in these Rules, new products and services shall be offered through affiliates.

B. **Definitions:** The following definitions apply for the purposes of Rule VII:

1. "Category" refers to a factually similar group of products and services that use the same type of utility assets or capacity. For example, "leases of land under utility transmission lines" or "use of a utility repair shop for third party equipment repair" would each constitute a separate product or service category.

2. "Existing" products and services are those which a utility is offering on the effective date of these Rules.

3. "Products" include use of property, both real and intellectual, other than those uses authorized under General Order 69-C.

4. "Tariff" or "tariffed" refers to rates, terms and conditions of services as approved by this Commission or the Federal Energy Regulatory Commission (FERC), whether by traditional tariff, approved contract or other such approval process as the Commission or the FERC may deem appropriate.

C. **Utility Products and Services**: Except as provided in these Rules, a utility shall not offer nontariffed products and services. In no event shall a utility offer natural gas or electricity commodity service on a nontariffed basis. A utility may only offer for sale the following products and services:

1. Existing products and services offered by the utility pursuant to tariff;

2. Unbundled versions of existing utility products and services, with the unbundled versions being offered on a tariffed basis;

3. New products and services that are offered on a tariffed basis; and

4. Products and services which are offered on a nontariffed basis and which meet the following conditions:

   a. The nontariffed product or service utilizes a portion of a utility asset or capacity;
   b. such asset or capacity has been acquired for the purpose of and is necessary and useful in providing tariffed utility services;
   c. the involved portion of such asset or capacity may be used to offer the product or service on a nontariffed basis without adversely affecting the cost, quality or reliability of tariffed utility products and services;
   d. the products and services can be marketed with minimal or no incremental ratepayer capital, minimal or no new forms of liability or business risk being incurred by utility ratepayers, and no undue diversion of utility management attention; and
   e. The utility's offering of such nontariffed product or service does not violate any law, regulation, or Commission policy regarding anticompetitive practices.

D. **Conditions Precedent to Offering New Products and Services:** This Rule does not represent an endorsement by the Commission of any particular nontariffed utility product or service. A utility may offer new nontariffed products and services only if the Commission has adopted and the utility has established:

1. A mechanism or accounting standard for allocating costs to each new product or service to prevent cross-subsidization between services a utility would continue to provide on a tariffed basis and those it would provide on a nontariffed basis;

2. A reasonable mechanism for treatment of benefits and revenues derived from offering such products and services, except that in the event the

Commission has already approved a performance-based ratemaking mechanism for the utility and the utility seeks a different sharing mechanism, the utility should petition to modify the performance-based ratemaking decision if it wishes to alter the sharing mechanism, or clearly justify why this procedure is inappropriate, rather than doing so by application or other vehicle.

3. Periodic reporting requirements regarding pertinent information related to nontariffed products and services; and

4. Periodic auditing of the costs allocated to and the revenues derived from nontariffed products and services.

E. **Requirement to File an Advice Letter:** Prior to offering a new category of nontariffed products or services as set forth in Rule VII C above, a utility shall file an advice letter in compliance with the following provisions of this paragraph.

1. The advice letter shall:

   a. demonstrate compliance with these rules;

   b. address the amount of utility assets dedicated to the non-utility venture, in order to ensure that a given product or service does not threaten the provision of utility service, and show that the new product or service will not result in a degradation of cost, quality, or reliability of tariffed goods and services;

   c. address the potential impact of the new product or service on competition in the relevant market including but not limited to the degree in which the relevant market is already competitive in nature and the degree to which the new category of products or services is projected to affect that market.

   d. be served on the service list of Rulemaking 97-04-011/Investigation 97-04-012, as well as on any other party appropriately designated by the rules governing the Commission's advice letter process.

2. For categories of nontariffed products or services targeted and offered to less than 1% of the number of customers in the utility's customer base, in the absence of a protest alleging non-compliance with these Rules or any law, regulation, decision, or Commission policy, or allegations of harm, the utility may commence offering the product or service 30 days after

submission of the advice letter. For categories of nontariffed products or services targeted and offered to 1% or more of the number of customers in the utility's customer base, the utility may commence offering the product or service after the Commission approves the advice letter through the normal advice letter process.

3. A protest of an advice letter filed in accordance with this paragraph shall include:
   a. An explanation of the specific Rules, or any law, regulation, decision, or Commission policy the utility will allegedly violate by offering the proposed product or service, with reasonable factual detail; or

   b. An explanation of the specific harm the protestant will allegedly suffer.

4. If such a protest is filed, the utility may file a motion to dismiss the protest within 5 working days if it believes the protestant has failed to provide the minimum grounds for protest required above. The protestant has 5 working days to respond to the motion.

5. The intention of the Commission is to make its best reasonable efforts to rule on such a motion to dismiss promptly. Absent a ruling granting a motion to dismiss, the utility shall begin offering that category of products and services only after Commission approval through the normal advice letter process.

F. **Existing Offerings**: Unless and until further Commission order to the contrary as a result of the advice letter filing or otherwise, a utility that is offering tariffed or nontariffed products and services, as of the effective date of this decision, may continue to offer such products and services, provided that the utility complies with the cost allocation and reporting requirements in this rule. No later than January 30, 1998, each utility shall submit an advice letter describing the existing products and services (both tariffed and nontariffed) currently being offered by the utility and the number of the Commission decision or advice letter approving this offering, if any, and requesting authorization or continuing authorization for the utility's continued provision of this product or service in compliance with the criteria set forth in Rule VII. This requirement applies to both existing products and services explicitly approved and not explicitly approved by the Commission.

G. **Section 851 Application**: A utility must continue to comply fully with the provisions of Public Utilities Code Section 851 when necessary or useful utility property is sold, leased, assigned, mortgaged, disposed of, or otherwise encumbered as part of a nontariffed product or service offering by the utility. If an application pursuant to Section 851 is submitted, the utility need not file a separate advice letter, but shall include in the application those items which would otherwise appear in the advice letter as required in this Rule.

H. **Periodic Reporting of Nontariffed Products and Services:** Any utility offering nontariffed products and services shall file periodic reports with the Commission's Energy Division twice annually for the first two years following the effective date of these Rules, then annually thereafter unless otherwise directed by the Commission. The utility shall serve periodic reports on the service list of this proceeding. The periodic reports shall contain the following information:

1. A description of each existing or new category of nontariffed products and services and the authority under which it is offered;

2. A description of the types and quantities of products and services contained within each category (so that, for example, "leases for agricultural nurseries at 15 sites" might be listed under the category "leases of land under utility transmission lines," although the utility would not be required to provide the details regarding each individual lease);

3. The costs allocated to and revenues derived from each category;

4. Current information on the proportion of relevant utility assets used to offer each category of product and service.

I. **Offering of Nontariffed Products and Services to Affiliates:** Nontariffed products and services which are allowed by this Rule may be offered to utility affiliates only in compliance with all other provisions of these Affiliate Rules. Similarly, this Rule does not prohibit affiliate transactions which are otherwise allowed by all other provisions of these Affiliate Rules.

VIII. Complaint Procedures and Remedies

A. The Commission shall strictly enforce these rules. Each act or failure to act by a utility in violation of these rules may be considered a separate occurrence.

B. **Standing**:

1. Any person or corporation as defined in Sections 204, 205 and 206 of the California Public Utilities Code may complain to the Commission or to a utility in writing, setting forth any act or thing done or omitted to be done by any utility or affiliate in violation or claimed violation of any rule set forth in this document.

2. "Whistleblower complaints" will be accepted and the confidentiality of complainant will be maintained until conclusion of an investigation or indefinitely, if so requested by the whistleblower. When a whistleblower requests anonymity, the Commission will continue to pursue the complaint only where it has elected to convert it into a Commission-initiated investigation. Regardless of the complainant's status, the defendant shall file a timely answer to the complaint.

C. **Procedure:**

1. All complaints shall be filed as formal complaints with the Commission and complainants shall provide a copy to the utility's designated officer (as described below) on the same day that the complaint is filed.

2. Each utility shall designate an Affiliate Compliance Manager who is responsible for compliance with these affiliate rules and the utility's compliance plan adopted pursuant to these rules. Such officer shall also be responsible for receiving, investigating and attempting to resolve complaints. The Affiliate Compliance Manager may, however, delegate responsibilities to other officers and employees.

    a. The utility shall investigate and attempt to resolve the complaint. The resolution process shall include a meet-and-confer session with the complainant. A Commission staff member may, upon request by the utility or the complainant, participate in such meet-and-confer sessions and shall participate in the case of a whistleblower complaint.

    A party filing a complaint may seek a temporary restraining order at the time the formal complaint is filed. The defendant utility and

other interested parties may file responses to a request for a temporary restraining order within 10 days of the filing of the request. An assigned commissioner or administrative law judge may shorten the period for responses, where appropriate. An assigned commissioner or administrative law judge, or the Commission shall act on the request for a temporary restraining order within 30 days. The request may be granted when: (1) the moving party is reasonably likely to prevail on the merits, and (2) temporary restraining order relief is necessary to avoid irreparable injury, will not substantially harm other parties, and is consistent with the public interest.

A notice of temporary restraining order issued by an assigned commissioner or administrative law judge will only stay in effect until the end of the day of the next regularly-scheduled Commission meeting at which the Commission can issue a temporary restraining order or a preliminary injunction. If the Commission declines to issue a temporary restraining order or a preliminary injunction, the notice of temporary restraining order will be immediately lifted. Whether or not a temporary restraining order or a preliminary injunction is issued, the underlying complaint may still move forward.

b. The utility shall prepare and preserve a report on each complaint, all relevant dates, companies, customers, and employees involved, and if applicable, the resolution reached, the date of the resolution and any actions taken to prevent further violations from occurring. The report shall be provided to the Commission and all parties within four weeks of the date the complaint was filed. In addition, to providing hard copies, the utility shall also provide electronic copies to the Commission and to any party providing an e-mail address.

c. Each utility shall file annually with the Commission a report detailing the nature and status of all complaints.

d. The Commission may, notwithstanding any resolution reached by the utility and the complainant, convert a complaint to an investigation and determine whether the utility violated these rules, and impose any appropriate penalties under Section VIII.D. or any other remedies provided by the Commission's rules or the Public Utilities Code.

3. The utility will inform the Commission's Energy Division and Consumer Services Division of the results of this dispute resolution process. If the dispute is resolved, the utility shall inform the Commission staff of the actions taken to resolve the complaint and the date the complaint was resolved.

4. If the utility and the complainant cannot reach a resolution of the complaint, the utility will so inform the Commission's Energy Division. It will also file an answer to the complaint within 30 days of the issuance by the Commission's Docket Office of instructions to answer the original complaint. Within 10 business days of notice of failure to resolve the complaint, Energy Division staff will meet and confer with the utility and the complainant and propose actions to resolve the complaint. Under the circumstances where the complainant and the utility cannot resolve the complaint, the Commission shall strive to resolve the complaint within 180 days of the date the instructions to answer are served on the utility.

5. The Commission shall maintain on its web page a public log of all new, pending and resolved complaints. The Commission shall update the log at least once every week. The log shall specify, at a minimum, the date the complaint was received, the specific allegations contained in the complaint, the date the complaint was resolved and the manner in which it was resolved, and a description of any similar complaints, including the resolution of such similar complaints.

6. Preliminary Discussions

    a. Prior to filing a formal complaint, a potential complainant may contact the responsible utility officer and/or the Energy Division to inform them of the possible violation of the affiliate rules. If the potential complainant seeks an informal meeting with the utility to discuss the complaint, the utility shall make reasonable efforts to arrange such a meeting. Upon mutual agreement, Energy Division staff and interested parties may attend any such meeting.

    b. If a potential complainant makes an informal contact with a utility regarding an alleged violation of the affiliate transaction rules, the utility officer in charge of affiliate compliance shall respond in writing to the potential complainant within 15 business days. The response would state whether or not the issues raised by the potential complainant require further investigation. (The potential complainant does not have to rely on the responses in deciding whether to file a formal complaint.)

D. Remedies

1. When enforcing these rules or any order of the Commission regarding these rules, the Commission may do any or all of the following:

    a. Order a utility to stop doing something that violates these rules;

    b. Prospectively limit or restrict the amount, percentage, or value of transactions entered into between the utility and its affiliate(s);

    c. Assess fines or other penalties;

    d. Prohibit the utility from allowing its affiliate(s) to utilize the name and logo of the utility, either on a temporary or a permanent basis;

    e. Apply any other remedy available to the Commission.

2. Any public utility which violates a provision of these rules is subject to a fine of not less than five hundred dollars ($500), nor more than $20,000 for each offense. The remainder of this subsection distills the principles that the Commission has historically relied upon in assessing fines and restates them in a manner that will form the analytical foundation for future decisions in which fines are assessed. Before discussing those principles, reparations are distinguished.

    a. Reparations

    Reparations are not fines and conceptually should not be included in setting the amount of a fine. Reparations are refunds of excessive or discriminatory amounts collected by a public utility. PU Code § 734. The purpose is to return funds to the victim which were unlawfully collected by the public utility. Accordingly, the statute requires that all reparation amounts are paid to the victims. Unclaimed reparations generally escheat to the state, Code of Civil Procedure § 1519.5, unless equitable or other authority directs otherwise, e.g., Public Utilities Code § 394.9.

    b. Fines

    The purpose of a fine is to go beyond restitution to the victim and to effectively deter further violations by this perpetrator or others.

For this reason, fines are paid to the State of California, rather than to victims.

Effective deterrence creates an incentive for public utilities to avoid violations. Deterrence is particularly important against violations which could result in public harm, and particularly against those where severe consequences could result. To capture these ideas, the two general factors used by the Commission in setting fines are: (1) severity of the offense and (2) conduct of the utility. These help guide the Commission in setting fines which are proportionate to the violation.

i. Severity of the Offense

The severity of the offense includes several considerations. Economic harm reflects the amount of expense which was imposed upon the victims, as well as any unlawful benefits gained by the public utility. Generally, the greater of these two amounts will be used in establishing the fine. In comparison, violations which caused actual physical harm to people or property are generally considered the most severe, with violations that threatened such harm closely following.

The fact that the economic harm may be difficult to quantify does not itself diminish the severity or the need for sanctions. For example, the Commission has recognized that deprivation of choice of service providers, while not necessarily imposing quantifiable economic harm, diminishes the competitive marketplace such that some form of sanction is warranted.

Many potential penalty cases before the Commission do not involve any harm to consumers but are instead violations of reporting or compliance requirements. In these cases, the harm may not be to consumers but rather to the integrity of the regulatory processes. For example, compliance with Commission directives is required of all California public utilities:

"Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the Commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees." Public Utilities Code § 702.

Such compliance is absolutely necessary to the proper functioning of the regulatory process. For this reason, disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity.

The number of the violations is a factor in determining the severity. A series of temporally distinct violations can suggest an on-going compliance deficiency which the public utility should have addressed after the first instance. Similarly, a widespread violation which affects a large number of consumers is a more severe offense than one which is limited in scope. For a "continuing offense," PU Code § 2108 counts each day as a separate offense.

ii. Conduct of the Utility

This factor recognizes the important role of the public utility's conduct in (1) preventing the violation, (2) detecting the violation, and (3) disclosing and rectifying the violation. The public utility is responsible for the acts of all its officers, agents, and employees:

"In construing and enforcing the provisions of this part relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his [or her] official duties or employment, shall in every case be the act, omission, or failure of such public utility." Public Utilities Code § 2109.

(1) The Utility's Actions to Prevent a Violation. Prior to a violation occurring, prudent practice requires that all public utilities take reasonable steps to ensure compliance with Commission directives. This includes becoming familiar with applicable laws and regulations, and most critically, the utility regularly reviewing its own operations to ensure full compliance. In evaluating the utility's advance efforts to ensure compliance, the Commission will consider the utility's past record of compliance with Commission directives.

(2) The Utility's Actions to Detect a Violation. The Commission expects public utilities to monitor diligently their activities. Where utilities have for whatever reason failed to meet this standard, the Commission will continue to hold the utility responsible for its actions. Deliberate as opposed to inadvertent wrong-doing will be considered an aggravating factor. The Commission will also look at the management's conduct during the period in which the violation occurred to ascertain particularly the level and extent of involvement in or tolerance of the offense by management personnel. The Commission will closely scrutinize any attempts by management to attribute wrong-doing to rogue employees. Managers will be considered, absent clear evidence to the contrary, to have condoned day-to-day actions by employees and agents under their supervision.

(3) The Utility's Actions to Disclose and Rectify a Violation. When a public utility is aware that a violation has occurred, the Commission expects the public utility to promptly bring it to the attention of the Commission. The precise timetable that constitutes "prompt" will vary based on the nature of the violation. Violations which physically endanger the public must be immediately corrected and thereafter reported to the Commission staff. Reporting violations should be remedied at the earliest administratively feasible time.
Prompt reporting of violations furthers the public interest by allowing for expeditious correction. For this reason, steps taken by a public utility to promptly and cooperatively report and correct violations may be considered in assessing any penalty.

iii. Financial Resources of the Utility

Effective deterrence also requires that the Commission recognize the financial resources of the public utility in setting a fine which balances the need for deterrence with the constitutional limitations on excessive fines. Some California utilities are among the largest corporations in the United States and others are extremely modest, one-person operations. What is accounting rounding error to one company is annual revenue to another. The Commission intends to adjust fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.

iv. Totality of the Circumstances in Furtherance of the Public Interest

Setting a fine at a level which effectively deters further unlawful conduct by the subject utility and others requires that the Commission specifically tailor the package of sanctions, including any fine, to the unique facts of the case. The Commission will review facts which tend to mitigate the degree of wrongdoing as well as any facts which exacerbate the wrongdoing. In all cases, the harm will be evaluated from the perspective of the public interest.

v. The Role of Precedent

The Commission adjudicates a wide range of cases which involve sanctions, many of which are cases of first impression. As such, the outcomes of cases are not usually directly comparable. In future decisions which impose sanctions the parties and, in turn, the Commission will be expected to explicitly address those previously issued decisions which involve the most reasonably comparable factual circumstances and explain any substantial differences in outcome.

IX. Protecting the Utility's Financial Health

A. **Information from Utility on Necessary Capital.** Each utility shall provide to the Commission on the last business day of November of each year a report with the following information:

1. the utility's estimate of investment capital needed to build or acquire long-term assets (i.e., greater than one year), such as operating assets and utility infrastructure, over each of the next five years;
2. the utility's estimate of capital needed to meet resource procurement goals over each of the next five years;
3. the utility's policies concerning dividends, stock repurchase and retention of capital for each year;
4. the names of individuals involved in deciding corporate policies for the utility's dividends, stock repurchase and retention of capital;
5. the process by which corporate policies concerning dividends, stock repurchase and retention of capital are implemented; and
6. how the utility expects or intends to meet its investment capital needs.

B. **Restrictions on Deviations from Authorized Capital Structure.** A utility shall maintain a balanced capital structure consistent with that determined to be reasonable by the Commission in its most recent decision on the utility's capital structure. The utility's equity shall be retained such that the Commission's adopted capital structure shall be maintained on average over the period the capital structure is in effect for ratemaking purposes. Provided, however, that a utility shall file an application for a waiver, on a case by case basis and in a timely manner, of this Rule if an adverse financial event at the utility reduces the utility's equity ratio by 1% or more. In order to assure that regulatory staff has adequate time to review and assess the application and to permit the consideration of all relevant facts, the utility shall not be considered in violation of this Rule during the period the waiver is pending resolution. Nothing in this provision creates a presumption of either reasonableness or unreasonableness of the utility's actions which may have caused the adverse financial event.

C. **Ring-Fencing.** Within three months of the effective date of the decision adopting this amendment to the Rules, a utility shall obtain a non-consolidation opinion that demonstrates that the ring fencing around the utility is sufficient to prevent the utility from being pulled into bankruptcy of its parent holding company. The utility shall promptly provide the opinion to the Commission. If the current ring-fencing provisions are insufficient to obtain a non-consolidation opinion, the utility shall promptly undertake the following actions:

1. notify the Commission of the inability to obtain a non-consolidation opinion;

2. propose and implement, upon Commission approval, such ring-fencing provisions that are sufficient to prevent the utility from being pulled into the bankruptcy of its parent holding company; and then

3. obtain a non-consolidation opinion.

D. **Changes to Ring-Fencing Provisions.** A utility shall notify the Commission of any changes made to its ring-fencing provisions within 30 days.

(END OF APPENDIX A-3)

CA EXHIBIT-27
DOCKET NO. 2015-0022

REBUTTAL TESTIMONY

OF

IAN CHAN HODGES

THE DIVISION OF CONSUMER ADVOCACY

SUBJECT: CORPORATE GOVERNANCE

CA EXHIBIT-27
DOCKET NO. 2015-0022

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REBUTTAL TESTIMONY OF IAN CHAN HODGES

I. INTRODUCTION.

Q. PLEASE STATE YOUR NAME, POSITION AND PLACE OF EMPLOYMENT.

A. My name is Ian Chan Hodges and I am the Managing Member of Responsible Markets LLC. I have been retained to provide testimony in this proceeding on behalf of the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate").

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN DOCKET NO. 2015-0022?

A. Yes, on August 10, 2015, I filed Direct Testimony on behalf of the Consumer Advocate. A statement of my background and experience is included in my Direct Testimony as CA EXHIBIT-6.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my Rebuttal Testimony is to respond to issues in the Applicants' Responsive Testimonies that have not been previously addressed in their direct testimony under the requirements set forth in Order No. 33116 in this Docket issued by the Public Utilities Commission of the State of Hawaii ("Commission"), in order to provide "the Consumer Advocate and the Intervenors with the opportunity to prefile rebuttal testimony in response to the Applicants' Responsive Testimonies and will provide the Applicants with an opportunity to prefile surrebuttal." The Commission's Order also cautions that "any rebuttal

testimony must be strictly limited to responding to issues in the Applicants' Responsive Testimonies that have not been previously addressed in their direct testimony." My testimony follows the Commission's requirements and provides rebuttal to the Applicants' Responsive testimony.

Q. WHAT IS THE FOCUS OF YOUR REBUTTAL TESTIMONY?

A. My Rebuttal Testimony is focused on the Applicants' response to conditions that I proposed on behalf of the Consumer Advocate.

II. CONDITIONS REJECTED BY APPLICANTS.

Q. HOW MANY OF THE CONDITIONS PROPOSED BY THE CONSUMER ADVOCATE AND OTHER INTERVENORS DID THE APPLICANTS REJECT?

A. Of the 278 proposed conditions listed in Applicants Exhibit-55 in their Responsive testimony, the Applicants rejected 136.

Q. HAVE ANY OF THE APPLICANTS' WITNESSES PROVIDED AN EXPLANATION FOR WHY NEARLY HALF OF THE CONDITIONS PROPOSED BY THE CONSUMER ADVOCATE AND THE OTHER INTERVENORS WERE REJECTED?

A. Yes. At pages 89 and 90 of Applicants Exhibit-36, Mr. Gleason states that "there were conditions proposed by the parties that the Applicants have not adopted. The Applicants do not view these additional conditions as reasonable, necessary or appropriate under the circumstances because the proposed conditions, or the underlying bases for the conditions, are: (1) irrelevant to whether or not NextEra Energy, Inc. ("NextEra Energy" or "NextEra") is fit and able, and whether the Proposed Transaction is consistent with the public interest; (2) involve matters outside of the scope of his docket; or (3) already accepted by Applicants. Applicants Exhibit-55 to the Responsive Testimony of Applicants' witness Reed addresses the reasons why these additional proposed conditions were not adopted."

Q. DOES WITNESS REED PROVIDE DETAILED REASONS WHY THE APPLICANTS REJECTED 136 CONDITIONS PROPOSED BY THE CONSUMER ADVOCATE AND OTHER INTERVENORS?

A. No. Witness Reed offers very little detail in the reasons he provides. At pages 260 through 264 of Applicants Exhibit-50, Mr. Reed does outline eight seemingly perfunctory reasons why the Applicants' "proposed merger conditions

were rejected." First, Mr. Reed references Applicants Exhibit-55, stating that "in the column labeled 'Response,' there are certain common themes in the rejection of proposed conditions." Mr. Reed also states conditions were rejected that the Applicants considered to be:

1) "mutually incompatible;"
2) "Seek[ing] to resolve issues that are clearly outside the scope of this case;"
3) "contrary to the interests of customers and the public interest;"
4) "unworkable;"
5) "Simply unreasonable;"
6) "Confiscatory;"
7) "potentially unconstitutional;" or
8) "contrary to public policy."

Mr. Reed listed a number of example conditions that were rejected for each of his above themes. However, he does not provide further explanation as to why any condition was rejected beyond simply listing it after a particular theme. In fact, with the exception of three of the conditions that I proposed on behalf of the Consumer Advocate, the only other analysis that Mr. Reed provides as to why the rejected conditions were found to be unacceptable by the Applicants is to point out that "for each proposed condition that was rejected by the Applicants, a very brief reason is provided in Applicants Exhibit-55." The most detailed reason for rejecting a condition in Applicants Exhibit-55 was just over 100 words.

III. THE KULEANA CONDITIONS.

Q. HAVE THE APPLICANTS SPECIFICALLY REJECTED CONDITIONS THAT YOU RECOMMENDED IN YOUR DIRECT TESTIMONY ON BEHALF OF THE CONSUMER ADVOCATE?

A. Yes. In Applicants Exhibit-55 of their Responsive Testimony, the Applicants rejected the three conditions described below that I recommended on behalf of the Consumer Advocate. These three conditions, which I will refer to collectively hereinafter as the Kuleana conditions, relate to Hawaiian Electric Holdings ("HEH") electing to become a Sustainable Business Corporation ("SBC") and the Hawaiian Electric Companies ("HECO") obtaining B Corporation certification:

> Kuleana Condition #1 (Applicants Exhibit-55 at page 16, #77)
> Immediately following approval of the proposed Change in Control, HEH will elect to become a Sustainable Business Corporation pursuant to HRS Chapter 420D. In addition to the general public benefit purpose required by HRS §420D-5(a), the articles of HEH will identify the following specific public benefits: (1) Providing low-income or underserved individuals or communities with beneficial products or services; (2) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business; (3) Preserving the environment; (4) Improving human health; (5) Promoting the arts, sciences, or advancement of knowledge; (6) Increasing the flow of capital to entities with a public benefit purpose; (7) Accomplishing any other particular benefit for society or the environment; and (8) Using the primary power of intellectual property (and excluding others from making, using or selling the invention) conferred by any and all patents to which HEH has an interest in to create and retain good jobs, uphold fair labor standards and enhance environmental protection. (CA Exhibit-4 at 1-2)

Kuleana Condition #2 (Applicants Exhibit-55 at page 42, #242)
Within 18 months of approval of the proposed Change in Control, the HECO Companies will have met all standards of accountability and transparency as well as social and environmental performance that are required to obtain certification as a B Corporation from B Lab. The HECO Companies will make whatever changes to its corporate policies, practices and governance that are necessary to achieve the minimum score of 80 required for B Corp certification. The HECO Companies will supply all documentation used to support its responses on the B Corp assessment to the Commission and the Consumer Advocate. During the biennial B Corp recertification process, the HECO Companies will commit to increase its score on the B Corp. assessment by a minimum of 5 points. (CA Exhibit-4 at 3)

Kuleana Condition #3 (Applicants Exhibit-55 at page 36, #206)
Within 90 days of approval of the proposed Change in Control, HEH will have elected its public Benefit Director pursuant to HRS §420D-7 and selected its public Benefit Officer pursuant to HRS §420D-9. The articles of HEH will prescribe the additional qualification that both HEH's public Benefit Director and its Benefit Officer will be selected with the advice and consent of the Commission. In addition to their reporting obligations under HRS §420D-11, HEH's public Benefit Director and Benefit Officer will report quarterly to the Commission and the Consumer Advocate on progress made in the previous quarter by HEH in improving delivery of each of the eight specific public benefits listed in HRS §420D-5(b). NextEra, HEH and HECO will not restrict nor impede through nondisclosure agreement or other means the public benefit reporting duties of HEH's public Benefit Director and Benefit Officer as required by HRS §420D-11. (CA Exhibit-4 at 2-3)

Q. PLEASE PROVIDE AN EXPLANATION AS TO WHY YOU NOW COLLECTIVELY REFER TO THE THREE PROPOSED CONDITIONS ABOVE AS THE KULEANA CONDITIONS?

A. In offering an explanation, I will first provide some context by excerpting from page one of witness Gleason's Responsive Testimony (Applicants Exhibit-36):

> **What is the purpose of your Responsive Testimony?**
> The purpose of my Responsive Testimony is to address the concerns raised by other parties to this case, to share NextEra Energy's perspective of its *kuleana* (responsibility, privilege and obligation) to attain Hawaii's energy aspirations, and to make clear the many specific commitments NextEra Energy is making to customers, communities, employees, the Commission, other stakeholders and the State.

Put simply, should the application be approved, these conditions will provide NextEra with the governance structure and third-party metrics necessary for fulfilling its Kuleana (responsibility, privilege, obligation and accountability) to Hawaii's people in a measurable and transparent manner. These Kuleana conditions provide HEH and HECO with a framework for defining and tracking the fulfillment of their fiduciary duty as holders of an exclusive franchise to act with loyalty and care towards Hawaii's communities. I will provide thoughts on the relationship between the Kuleana commitments and the evolution of fiduciary duty in the 21st century later in my testimony.

Q. DO THE APPLICANTS PROVIDE REASONS FOR REJECTING THE KULEANA CONDITIONS?

A. Yes. In Applicants Exhibit-55 (pages 16, 36 & 42) the same reason is provided for rejecting all three of the proposed Kuleana conditions above:

> **Applicants' Response:** Rejected; this would be a significant change in corporate organization and is unprecedented for an electric utility. Partially addressed by commitment 18.

Q. PLEASE PROVIDE AN INITIAL REBUTTAL OF THE APPLICANTS' RESPONSE ABOVE IN REJECTING THE PROPOSED KULEANA CONDITIONS?

A. I will provide two initial responses as a rebuttal to the reasons provided in the Applicants Exhibit-55 for rejecting the Kuleana Conditions. First, the change in control that the Applicants are proposing in this docket represents a significant change in the corporate organization of the HECO Companies and their holding company. Claiming that a "significant change" in the organizational status quo of the HECO Companies is in itself objectionable and sufficient grounds for rejecting a proposed condition is clearly nonsensical given the subject of this docket. Second, adopting a B Corporation governance structure is not "unprecedented for an electric utility" as the Applicants claim. As I discussed in my Direct Testimony (CA EXHIBIT-5 at pages 30 through 33), Green Mountain

Power in Vermont "became a certified B Corp in December and is considered by Hawaii's Energy Excelerator[1] and others[2] to be a leader in energy innovation."

Q. DO THE APPLICANTS PROVIDE ANY ADDITIONAL EXPLANATION FOR REJECTING THE KULEANA CONDITIONS?

A. Yes. In the Section on Merger Commitments and Conditions of his Responsive Testimony (Applicants Exhibit-55 at pages 262 through 264), witness Reed provides some explanation for why the Kuleana conditions were rejected by the Applicants. In fact, out of the 136 conditions rejected by the Applicants, these three are among a small number of conditions that Reed addresses in any detail.

Q. WHAT EXPLANATION DOES WITNESS REED PROVIDE FOR REJECTING THE KULEANA CONDITIONS?

A. Reed provides an initial explanation at page 262 of Applicants Exhibit-50:

> First, these conditions are unnecessary to demonstrate that the Proposed Transaction is in the public interest or to ensure that the public interest continues to be served following the consummation of the merger. Second, these conditions would expose the Hawaiian Electric Companies to new risks. Finally, these conditions go well beyond the scope of the Commission's authority over the Hawaiian Electric Companies and would be unprecedented.

---

1 Conversation with Energy Excelerator Co-Founder Dawn Lippert on July 31, 2015.

2 McKibben. Bill. *Power to the People.* The New Yorker. Annals of Innovation | June 29, 2015.

Reed goes on to provide further explanation at pages 263 and 264:

> The Hawaiian Electric Companies are neither part of an SBC or a B Corp. today. Instead they are subsidiaries of a public utility holding company, HEI. As I discussed earlier in my Responsive Testimony, the Proposed Transaction would simply substitute NextEra Energy for HEI as the ultimate parent of the Hawaiian Electric Companies. The Hawaiian Electric Companies will continue to operate as public utilities under the jurisdiction and oversight of the Commission. The Commission will continue to have full authority to ensure that the Hawaiian Electric Companies comply with all applicable statutes, regulations and policies, including those serving the public interest.
>
> Further, the SBC Condition would mandate that the HEH charter include a number of specific public purposes which are not part of the Hawaiian Electric Companies' existing charter. Likewise, in order to obtain B Corp certification, HEH would be required to complete an "impact assessment" and commit to either formally convert to a public benefit corporation under state law or otherwise reflect similar public benefit principles in the company's organizational documents. As public utilities regulated by the Commission, the Hawaiian Electric Companies serve a critical role for their customers and an important public purpose in the provision of safe, reliable, environmentally sustainable and affordable electric service, consistent with their core values of *Aloha*, Integrity, Excellence, and Safety. The public purposes recommended by witness Hodges include "providing low-income or underserved individuals or communities with beneficial products or services," "promoting economic opportunity ... beyond the creation of jobs in the normal course of business," "preserving the environment," "improving human health", and others. While these purposes may represent important social principles, they go beyond any reasonable definition or application of the public interest standard. [footnote omitted]

Q. HOW WILL YOU ORGANIZE YOUR REBUTTAL OF WITNESS REED'S EXPLANATION OF WHY THE APPLICANT REJECTED THE KULEANA CONDITIONS?

A. While I will be succinct in my rebuttal, I will not follow the example set by the Applicants in their response to conditions proposed by the intervenors and simply reject witness Reed's explanation in 50 words or less. What I will do is outline the explanatory points that I believe Reed is trying to make in justifying the Applicants' rejection of the Kuleana conditions. I will then provide a rebuttal to each point.

Q. WHAT IS THE FIRST POINT WITNESS REED MAKES IN HIS EXPLANATION OF WHY THE APPLICANTS REJECTED THE KULEANA CONDITIONS?

A. Witness Reed's first explanatory point is that "these conditions are unnecessary to demonstrate that the Proposed Transaction is in the public interest or to ensure that the public interest continues to be served following the consummation of the merger."

Q. WHAT IS YOUR RESPONSE?

A. The vast majority of intervenors in this docket have determined that the Proposed Transaction is not in the public interest and confidence is not high that the Applicants will be focused on serving the public interest should the merger be consummated. In addition, five of the seven public listening sessions scheduled by the Commission have already been held. By now it should be clear to the Applicants that the level of trust in NextEra's willingness/ability to adequately serve the public interest in Hawaii should the application be approved is quite low. Given this situation, it seems that NextEra should welcome and recognize as necessary the opportunity to adopt conditions that would provide widely utilized metrics for determining if the public interest is being served through a trusted third-party assessment as well as the services of a public Benefit Director and Officer pursuant to HRS §420D.

Q. WHAT IS THE SECOND POINT WITNESS REED MAKES IN HIS EXPLANATION OF WHY THE APPLICANTS REJECTED THE KULEANA CONDITIONS?

A. Witness Reed's second explanatory point is that "these conditions would expose the Hawaiian Electric Companies to new risks."

Q. WHAT IS YOUR RESPONSE?

A. First, it is inherently difficult to rebut the allegation that the Kuleana conditions "would expose the Hawaiian Electric Companies to new risks" because witness Reed provides neither details nor any assessment about the nature of these new risks that he has apparently identified. In addition, Reed states that "these conditions would expose" (emphasis added) the HECO Companies to new risks. Such certainty with regard to risk assessment is somewhat unusual and would normally be followed with a detailed description of the analysis undertaken that resulted in such a definitive determination.

That being said, earlier in my testimony I mentioned the relationship between the Kuleana conditions and fiduciary duty in the 21st century. Given witness Reed's concern about undefined "new risks" that would result from adopting the Kuleana conditions, this is an appropriate place to address this relationship since fiduciaries have a duty to properly identify and assess risks in any investment situation.

On October 1, 2015, the Morgan Stanley Institute for Sustainable Investing in New York hosted the US launch of the report *Fiduciary Duty in the 21st Century*. The purpose of this report — according to the executive summary — is "to end the debate about whether fiduciary duty is a legitimate barrier to investors integrating environmental, social and governance ("ESG") issues into their investment processes." An excerpt from an invitation to this event follows:

> While many investors have made positive steps to incorporate sustainability risks into the way they deliver their fiduciary duty, the report argues that too many assets are still managed with a 20th century mindset, exposing savers and beneficiaries to the threat of value loss.
>
> The research, based on structured interviews with senior investment professionals, lawyers and policy makers, finds that failing to consider long-term investment value drivers, which include environmental, social and governance issues, in investment practice is a failure of fiduciary duty.

Fiduciary Duty in the 21st Century includes a forward written by Richard Lacaille who serves as Global Chief Investment Officer for State Street Global Advisors. An excerpt of his forward follows:

> Sound logic informs the ESG investment thesis, grounded in the belief that value creation is influenced by more than financial capital alone, especially longer term. There is mounting evidence that ESG issues can affect the performance of investment portfolios and have implications for a company's earnings and prospects as well as broader economic functioning.
>
> This view is informed both by our own research as well as a body of academic and industry study. In parallel, active ownership plays a prominent role in our duty to act as stewards of our clients' assets. We expect strong governance standards from our investee companies and our direct engagement with them focuses on advocating change where poor ESG practices place shareholder value at risk.
>
> 'Fiduciary Duty in the 21st Century' offers a compelling argument for investors which may be circumspect of the compatibility of ESG with their duties as a fiduciary. For those already cognizant of the relevance of sustainability issues to investment and active ownership practices it stands as a stout affirmation. Regardless of the readers position it's a pivotal contribution to the literature on a critical aspect of the bedrock of investment.

Mr. Lacaille's views on ESG are particularly relevant to my testimony because State Street is the second largest shareholder in NextEra Energy with holdings of just under 20 million shares as of June 30, 2015. As State Street's Lacaille makes clear, institutional shareholders who are large holders of NextEra's stock recognize that poor ESG practices can place shareholder value at risk. There is a growing demand for governance structures and third-party metrics that allow institutional investors to track the ESG performance of the companies they invest in.

Q. DO YOU HAVE A SPECIFIC EXAMPLE OF INSTITUTIONAL INVESTORS SHOWING INTEREST IN HAWAII'S SBC LAW?

A. Yes. Shortly after the close of Hawaii's 2011 legislative session, the chair of the House Finance Committee replied to a letter from the chair of CalPERS' investment committee who had written to express interest in the unique elements of the SBC bill.

> Thank you for your interest in Hawaii's sustainable ingenuity legislation (SB 298). When I received your letter the bill was still moving through the committee process. The legislature is not adjourned and I am happy to report that SB 298 was passed by a final bipartisan vote of 72 to 1… By passing SB 298, I believe that the Hawaii legislature has put into place a statutory foundation that will help us meet the future challenges of the global economy in a sustainable manner.
>
> It is also my belief that just as Delaware corporate law provided an influential statutory framework for 20th century corporate governance, Hawaii's sustainable ingenuity corporation can provide a national platform for environmental, social, and corporate

> governance (ESG) in the 21st century. So I was very pleased to learn of the announcement by CalPERS in May that it will integrate ESG considerations into investment decision making across all of its asset classes. CalPERS is once again blazing a trail that other pension funds will certainly look to as an example of best practices. Likewise, Hawaii's sustainable ingenuity corporation law was drafted to integrate ESG directly into the organizational structure of corporations.

As the nation's largest pension fund, CalPERS is recognized as one of the leaders in ESG practice. Last month, the $300 billion fund received an 'A+' for its ESG investment approach in the 2015 Principles of Responsible Investment ("PRI") Assessment Report. CalPERS is also a significant shareholder in NextEra Energy.

Q. WHAT IS THE THIRD POINT WITNESS REED MAKES IN HIS EXPLANATION OF WHY THE APPLICANTS REJECTED THE KULEANA CONDITIONS?

A. Witness Reed's third explanatory point is that "The Hawaiian Electric Companies are neither part of an SBC or a B Corp. today. Instead they are subsidiaries of a public utility holding company, HEI. As I discussed earlier in my Responsive Testimony, the Proposed Transaction would simply substitute NextEra Energy for HEI as the ultimate parent of the Hawaiian Electric Companies."

Q. WHAT IS YOUR RESPONSE?

A. First, I do not have a rebuttal to witness Reed's statement that the HECO Companies are not currently "part of an SBC or a B Corp." Clearly there would be no need for the Consumer Advocate to recommend the Kuleana conditions if HECO had already elected to become a SBC and HEH was currently a certified B Corp. However, Reed's statement that the HECO Companies "are subsidiaries of a public utility holding company, HEI" while not inaccurate is an oversimplification of the structure of HEI, which is also a bank holding company regulated by the Federal Reserve Board. The fact that HEI is both a public utility holding company and a bank holding company adds a category of complexity to the proposed transaction that is likely unprecedented for the acquisition of a public utility. While it is not entirely clear what point witness Reed is trying to make, he seems to be arguing that the Kuleana conditions would add unnecessary complexity to a transaction that seeks to simply swap one parent company for another. This is simply not the case.

Q. WHAT IS THE FOURTH POINT WITNESS REED MAKES IN HIS EXPLANATION OF WHY THE APPLICANTS REJECTED THE KULEANA CONDITIONS?

A. Witness Reed's fourth explanatory point is that "The Hawaiian Electric Companies will continue to operate as public utilities under the jurisdiction and oversight of the Commission. The Commission will continue to have full authority

to ensure that the Hawaiian Electric Companies comply with all applicable statutes, regulations and policies, including those serving the public interest."

Q. WHAT IS YOUR RESPONSE?

A. I do not have a rebuttal to witness Reed's general statement above. I agree that if the application is approved the HECO Companies will continue to be under the oversight and jurisdiction of the Commission which will continue to have the authority to safeguard the public interest. However, I do not see how this point holds any explanatory power as to why the Applicants rejected the Kuleana conditions which would provide the public with another level of transparency and accountability that is built into the governance of both the HECO companies and HEH should the application be approved. These conditions would augment rather than detract from the Commission's central statutory role of providing regulatory oversight of HECO and HEH and safeguarding the public interest.

Q. WHAT IS THE FIFTH POINT WITNESS REED MAKES IN HIS EXPLANATION OF WHY THE APPLICANTS REJECTED THE KULEANA CONDITIONS?

A. Witness Reed's fifth explanatory point is that "the SBC Condition would mandate that the HEH charter include a number of specific public purposes which are not part of the Hawaiian Electric Companies' existing charter. Likewise, in order to obtain B Corp. certification, HEH would be required to complete an 'impact assessment' and commit to either formally convert to a public benefit corporation under state law or otherwise reflect similar public benefit principles in the company's organizational documents. As public utilities regulated by the Commission, the Hawaiian Electric Companies serve a critical role for their customers and an important public purpose in the provision of safe, reliable, environmentally sustainable and affordable electric service, consistent with their core values of Aloha, Integrity, Excellence, and Safety. The public purposes recommended by witness Hodges include 'providing low-income or underserved individuals or communities with beneficial products or services,' 'promoting economic opportunity ... beyond the creation of jobs in the normal course of business,' 'preserving the environment,' 'improving human health,' and others. While these purposes may represent important social principles, they go beyond any reasonable definition or application of the public interest standard."

Q. WHAT IS YOUR RESPONSE?

A. As I discussed in my Direct Testimony, Green Mountain Power is committed to continuous improvement in how it broadly serves the public interest through its plan to increase its B Score annually. Rather than rejecting the B Corp condition, the Applicants should see it as a valuable method for setting a baseline of broad public interest performance and then as a tool to measure and motivate continuous improvement. If the Application is approved, HEH, as the holding company for the HECO Companies, would need to fully support the HECO Companies' achievement of 100% RPS by 2045. As it makes progress towards this objective, HEH would clearly be simultaneously promoting progress towards achieving the public purposes of "providing low-income or underserved individuals or communities with beneficial products or services," "promoting economic opportunity ... beyond the creation of jobs in the normal course of business," "preserving the environment," "improving human health" as well as the other public purposes pursuant to HRS Chapter 420D.

Q. ARE THERE OTHER ACTIONS OF THE APPLICANTS THAT MAKE THE REJECTION OF THE KULEANA CONDITIONS SOMEWHAT SURPRISING?

A. Yes. Last month, NextEra provided the Consumer Advocate with an unsolicited copy of the report, *Genealogy of Energy Development in Hawai'i*. The report was prepared for NextEra by Honolulu based DTL and begins with the following introduction:

> Hawai'i is uniquely poised to lead the way in renewable energy development and use, given its aggressive energy policy and abundant natural resources. We sit at a critical juncture in our history, confronted with an unprecedented environmental crisis, and we must make difficult decisions for the future use of dwindling natural resources. Knowing the past is critical to understand present concerns and lays the groundwork for communities to take a more active role in decision-making in the future.

The report then goes on to provide a broad survey of the history of energy development in Hawaii and finally concludes with the following thoughts:

> The history of energy development in Hawai‘i reveals an early appreciation for new technologies and a willingness to innovate. From King Kalākaua's push to electrify the Kingdom to the recent passage of Act 97, the desire to secure Hawai‘i's energy independence is long-standing. Perhaps more then ever before, we are moving towards that end. How that process unfolds is partly a function of Hawai‘i's past.
>
> Long ago, Hawai‘i's isolation laid the foundation for relationships of intimacy and reciprocity between humans and the environment. These qualities remained at the heart of a Native Hawaiian worldview. Increasingly, more and more people are framing their own relationships to the natural world in a similar fashion. Sustainable systems, shared resources, respect for nature's assets — these dynamics will shape the debate over how we commercialize and draw power from the wind, water, sun, and steam. Their application has precedence in Hawai‘i's pre-contact history, and we're seeing the successful reintroduction of Native Hawaiian thinking and methods in modern contexts such as aquaculture, farming, and education. Energy can be one such context. Now is the time to engage it.

Q. WHAT IS YOUR RESPONSE?

A. The *Genealogy of Energy Development in Hawai'i* provides valuable history and context for energy development in Hawaii. In addition, a number of the report's observations are quite relevant to this docket:

1) Hawaii is poised to lead in renewable energy development.
2) Knowing the past is critical to understand present concerns and lays the groundwork for communities to take a more active role in decision-making in the future.
3) Hawaii has a history of embracing new technologies and showing an inclination to innovate.
4) There is a long-standing desire to achieve energy independence in Hawaii.
5) Native Hawaiian thinking and methods are being reintroduced in modern contexts.

These observations and others in *Genealogy of Energy Development in Hawai'i* point to the benefits of adopting the Kuleana conditions rather than rejecting them.

IV. CONCLUSION.

Q. DO YOU HAVE ANY CONCLUDING THOUGHTS?

A. Yes. The Applicants' criteria for rejecting 136 conditions recommended by the Consumer Advocate and other intervenors as outlined by Reed on page 4 are not applicable to the Kuleana conditions. The Kuleana conditions are NOT:

- "mutually incompatible;"
- "Seek[ing] to resolve issues that are clearly outside the scope of this case;"
- "contrary to the interests of customers and the public interest;"
- "unworkable;"
- "Simply unreasonable;"
- "Confiscatory;"
- "potentially unconstitutional;" or
- "contrary to public policy."

On the contrary, the Kuleana conditions will provide HEH and the HECO Companies with beneficial governance mechanisms and third party metrics that are necessary to drive continuous improvement in serving the public interest. Furthermore, the Kuleana conditions will also provide significant benefits to the shareholders of NextEra Energy for reasons that I outlined at pages 14 through 17. A compelling reason for rejecting the Kuleana conditions appears to be absent from the Applicants' Responsive Testimony.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes. It does.

CA EXHIBIT-28
DOCKET NO. 2015-0022

REBUTTAL TESTIMONY

OF

STEPHEN G. HILL

ON BEHALF OF
THE DIVISION OF CONSUMER ADVOCACY

SUBJECT: FINANCIAL ISSUES RELATED TO THE PROPOSED MERGER BETWEEN HAWAIIAN ELECTRIC INDUSTRIES AND NEXTERA ENERGY

CA EXHIBIT-28
DOCKET NO. 2015-0022

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REBUTTAL TESTIMONY OF STEPHEN G. HILL

I. INTRODUCTION / SUMMARY.

Q. PLEASE STATE YOUR NAME, OCCUPATION AND ADDRESS.

A. My name is Stephen G. Hill. I am self-employed as a financial consultant, and principal of Hill Associates, a consulting firm specializing in financial and economic issues in regulated industries. My business address is P.O. Box 587, Hurricane, West Virginia, 25526 (e-mail: hillassociates@gmail.com).

Q. ARE YOU THE SAME STEPHEN HILL WHO TESTIFIED PREVIOUSLY ON BEHALF OF THE HAWAII DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY (CONSUMER ADVOCATE OR CA), IN THIS PROCEEDING REGARDING FINANCIAL ISSUES RELATED TO THE PENDING ACQUISITION?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY AT THIS TIME?

A. In its recent Order No. 33116 Establishing Dates for Additional Prefiled Testimony and Modifying Certain Procedural Dates, filed on September 11, 2015, in this Docket, the Public Utilities Commission of the State of Hawaii (Commission or HPUC), in order to "manage these proceedings as efficiently and effectively as possible" requested that the parties provide additional pre-filed testimony to further clarify the issues in this proceeding. The Commission requested that the

Intervenors provide Rebuttal testimony related directly to issues raised in the Applicants' Responsive testimony (e.g., additional transaction commitments, re-assessment of economic benefits, direct responses to Intervenor testimony) and also that the Applicants provide subsequent Surrebuttal testimony. The Commission also underscores that the requested testimony be "strictly limited" to issues not previously addressed. That is, the Intervenors' Rebuttal is to be limited to issues raised only in the Applicant's Responsive testimony and, in turn, the Applicant's Surrebuttal testimony is to be limited to issues raised only in the Intervenors' Rebuttal testimony. My testimony in this proceeding follows those guidelines and provides rebuttal to the Applicants' Responsive testimony, including the newly-offered transaction commitments and Applicants' direct comments regarding issues raised in my Direct Testimony.

Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.

A. My testimony is organized in two sections. First, I address new financial and corporate structure commitments made by the Applicants. While many of those new commitments are welcome additions to those already made, and some do offer additional protections for ratepayers, overall, those new commitments have not "moved the bar" to any significant extent. Ultimately, the financial and corporate structure remedies I initially recommended will still be necessary to ensure that the Hawaiian Electric Companies' (Hawaiian Electric Company, Inc. (HECO), Hawaii Electric Light Company, Inc. (HELCO), and Maui Electric

Company, Limited (MECO) ratepayers are protected from potential financial stress at the NextEra Energy, Inc. (NextEra Energy or NEE) parent level, if the proposed acquisition is allowed to proceed.

Second, I address the Applicants' response to the return on equity (ROE) and capital structure recommendations utilized for the Consumer Advocate's suggested customer benefit Rate Plan. Witnesses Sekimura and Lapson undertake the Applicants' response to my equity return and capital structure recommendations for the CA's customer benefit Rate Plan. Although neither of those witnesses are cost of capital experts,[1] I respect their analytical acumen and will directly address all of their cited concerns, showing that Applicants' concerns are unfounded and my equity return and capital structure recommendations embodied in the CA Rate Plan are reasonable.

Moreover, the ROE and capital structure recommendations I provide for use in the CA's customer benefit Rate Plan are supported in the record in this case. The investors' required return on equity capital used to determine the stock price NEE would pay for HECO in this transaction, which is provided by Hawaiian Electric Industries, Inc.'s (HEI) financial advisor (JP Morgan), indicates my recommended ROE for the CA's Rate Plan is conservative (i.e., relatively high). Similarly, my recommended ratemaking common equity ratio is not only equal to the common equity ratio of the market-traded electric utility industry

[1] See Applicants' responses to CA-IR-429 and CA-IR-447.

(the companies used to estimate the cost of equity capital) but also is conservative (again, relatively high) when compared to the manner in which NEE expects to capitalize its investment in the HECO Companies.

II. NEW FINANCIAL COMMITMENTS.

Q. APPLICANTS' WITNESS GLEASON PROVIDES A FULL LIST OF COMMITMENTS, INCLUDING 54 NEW COMMITMENTS, WHICH, HE INDICATES, RESPOND TO CONCERNS RAISED BY INTERVENORS IN THIS PROCEEDING. DO THESE NEW COMMITMENTS ALLEVIATE YOUR CONCERNS WITH FINANCIAL, CORPORATE STRUCTURE, OR TRANSPARENCY ISSUES, OR THE NEED FOR FINANCIAL PROTECTIONS (RING-FENCING) IN THE PROPOSED TRANSACTION?

A. No. Many of the new Commitments are welcome in that they add to the financial independence of the HECO Companies, support more representative input into the NEE decision-making process from Hawaii sources, and encourage dialogue between the Companies and the stakeholders in the regulatory process. Some of the new Commitments do very little not already done by previous commitments. However, overall, the new Commitments, which do not support an actual board of directors for Hawaiian Electric Holdings (HEH) or specific bankruptcy protections for HEH, do not go far enough to protect the HECO Companies' Hawaii ratepayers from the operational and financial risks that exist with NEE and its unregulated operations.

Q. CAN YOU PLEASE LIST THE NEW COMMITMENTS OFFERED BY THE APPLICANTS THAT IMPACT THE FINANCIAL ISSUES RELATED TO THE PROPOSED TRANSACTION, AND PROVIDE YOUR ASSESSMENT OF THEIR VALUE TO RATEPAYER PROTECTIONS OR BENEFITS?

A. Yes, they are listed and discussed below:

- Commitment 23 - Local Hawaiian Electric Companies' management will maintain responsibility for preparation of the Hawaiian Electric Companies' capital and operating budgets, which will be subject to the review of the NextEra Energy Chairman and CEO, and approval of the NextEra Energy Board of Directors, as is the case with NextEra Energy's other two principal businesses, Florida Power & Light Company ("FPL") and NextEra Energy Resources, LLC ("NEER").

It is beneficial to clarify that local management will prepare operating budgets that will be, ultimately, subject to review of upper management. However, as the commitment notes, that is the manner in which the rest of the company operates, and it is reasonable to believe that local management has a better grasp on local conditions that would most closely impact capital budget implementation and, therefore, local responsibility for capital budgets would be a logical condition of the business. Therefore, succinctly stating this Commitment is beneficial in that it removes doubt about the focus of responsibility but, overall, it is likely that operations would have proceeded in that manner anyway.

- Commitment 24 - Consistent with the $20 million authority provided to the President and CEO of each of NextEra Energy's other two principal businesses, FPL and NEER, the President and CEO of the Hawaiian Electric Companies will have a commitment authority of up to $20 million for any individual capital investment within an approved overall budget.

Again, it is beneficial to clarify these details regarding what the maximum capital budget authority is for the HECO Companies, but that authority is the same as that of NEE's other operations and, thus, is likely to have been the case prior to the codification of this new Commitment. While it shows that the HECO Companies are expected to receive equal treatment in the NEE family of companies, that sort of treatment had previously been promised, and Commitment 24 does not offer any special dispensation or protections for HECO.

- Commitment 26 - The local, independent Hawaiian Electric Companies advisory board will include members from each of the counties of O'ahu, Maui and Hawai'i.
- Commitment 27 - Local management of the Hawaiian Electric Companies will remain the primary point of contact in regulatory matters.
- Commitment 28 - The President and CEO of the Hawaiian Electric Companies will meet with the Commission and the Consumer Advocate at least on a quarterly basis.
- Commitment 29 - The President and CEO of the Hawaiian Electric Companies will hold an annual community meeting on each island served by the Companies, with two meetings on the Island of Hawai'i.
- Commitment 30 - The Chairman and CEO of NextEra Energy will travel to Hawai'i for meetings with the Commissioners, Consumer Advocate and the local, independent advisory board at least once annually. Any costs incurred for the travel of the Chairman and CEO of NextEra Energy will not be included in the Hawaiian Electric Companies' rates.

I have aggregated these commitments because they address the level of the contact between the merged Companies and the regulators and customers in Hawaii. Conditions 26 through 30 are, in my view, additional modifications of the Applicants' original Commitment 25, which promises, "in lieu of the existing Hawaiian Electric Board of Directors" to form an "advisory board" to provide input

to NEE on matters of "local and community interest." The new Commitments (26 through 30) add to the original "advisory board," which indicated local input into Company decisions, promising that the members of the board will be from each of the counties in which the HECO Companies operate. These new conditions also promise that Hawaii will remain the primary point of contact for regulatory matters, the HECO Companies will hold annual community meetings on each island served, and the primary officers of NEE will meet (in person) with Hawaii stakeholders annually.

Although it is reasonable to believe that the primary point of contact for regulatory matters would always have been the HECO Companies' Hawaii management, and, therefore, Commitment 27 is not a conditional improvement, each of the other new Commitments do work to better emphasize the HECO Companies' focus on Hawaii. In that light, certain new commitments may be viewed as beneficial.

However, in my view, the "advisory board" even with added annual visits by NEE officers, community meetings, or special care to select citizens from all the islands served by the HECO Companies, remains just that—a group that offers opinions, but has no actual governing/voting input toward corporate decisions made in Hawaii. NEE, apparently, although seeing "advice" from Hawaii residents and regulators, wants to keep all of the actual decision-making authority in Florida.

My original recommendation on this issue (which the HECO Companies reject in Applicants Exhibit-55, Conditions 239 and 240) is that HEH have an actual, active, voting board of directors (just as HEI now does) and that at least four of those directors are to be Hawaii residents. In that case, NEE's executive officers could also be officers of the HEH board and, thereby, have a controlling interest on the board (in order that they are able to execute the plans of the parent corporation). The Applicants express concern that NEE would be hampered in its ability to include HEH in its corporate-wide financial plans with a board of directors (Lapson testimony, pp. 43, 44), but that would not be true under the CA recommendation, because the NEE management would maintain voting control of HEH. However, while maintaining NEE corporate control, an HEH board of directors (under the CA suggestion of including local input) would also be subject to the direct, voting input of Hawaii residents, who have a local focus in addition to a corporate-wide focus.

In Mr. Gleason's Responsive Testimony, he indicates that local governance restrictions would "impede" NEE's oversight ability and diminish the value of the merger. When asked, in CA-IR-405(a), if a board of directors for HEH that did *not* impede NEE's oversight ability would diminish the value of the merger to NEE, Mr. Gleason conceded that "it may not," but added, "…such a change would be unnecessary and risk successful completion and consummation of the Proposed Transaction." Therefore, "impeding" NEE's corporate reach is not the issue. Mr. Gleason's response indicates that even if a board of directors did not impede

NEE's oversight of HECO, a requirement to form a voting board of directors with some board members from Hawaii remains a "deal-breaker." Although requested in CA-IRs-387, 405(c), 418, 422(b), and 463(c), the Applicants do not provide an answer to the question of why a voting board of directors for HEH, controlled by NEE and populated with four Hawaii citizens, as suggested by CA, is unacceptable.

HEI currently has a board of directors and maintaining that structure for HEH would not be a difficult or unusual process. Moreover, having a voting board of directors with at least four Hawaii residents would ensure that a local viewpoint is included in all decisions that HEH makes. That appears to be the intent of the Applicants' suggested "advisory board," but NEE does not have to incorporate any input of the advisory board if it wishes not to. However, the opinions of the local voting members of an HEH board of directors would be a matter of record that NEE or its shareholders could not ignore. I continue to believe the advisory board and the additional commitments are not sufficient to ensure official input of the residents of Hawaii into the corporate decisions of HEH and NEE. HEH should be incorporated with an active board of directors with residents of Hawaii comprising at least four members of that board.

Finally on this point, as Mr. Reed admits in response to CA-IR-421(c), in the 2008 Puget Sound/McQuarie Bank merger, cited in my Direct Testimony (CA Exhibit-7, p. 80), the settlement agreement included the requirement that the Board of Directors of the utility include "local representation."

- Commitment 31 - NextEra Energy is not entering into this transaction with the intention of selling Hawaiian Electric Holdings or its subsidiaries. NextEra Energy commits that it will not sell Hawaiian Electric Holdings or its electric utility subsidiaries for a period of at least 10 years post-closing, and any subsequent sale will be subject to the review and approval of the Commission as provided by law.

This commitment is beneficial in that is affirms that NEE is not acquiring the HECO Companies in order to quickly re-sell it. If this were a significant concern at the outset, which I believe it was not, the certainty Commitment 31 provides would be valuable to ratepayers. Again, it is likely that NEE's interests from the outset were long-term and this commitment, while responding to the concerns of some intervenors, does not make the proposed transaction substantially more beneficial to Hawaii ratepayers.

- Commitment 60 – NextEra Energy commits that there will be no cross-collateralization or cross-financial guarantees between the Hawaiian Electric Companies and NextEra Energy and its subsidiaries or affiliates, no money pools or shared credit facilities, and no pledging of Hawaiian Electric Company utility assets for any obligation of another affiliate.

This additional commitment is beneficial to ratepayers. One of the ways in which parent companies have access to monies generated by subsidiaries is through inter-corporate money-pool operations where the surpluses of one company are loaned to sister subsidiaries or the parent when those companies are short of funds. The CA recommended that the Applicants include just such a commitment, and, to their credit, they have. Commitment 60 will be beneficial to Hawaii ratepayers in that it will prevent other NEE companies from utilizing HEH

cash surpluses that could be used locally for local purposes.

- Commitment 61 - NextEra Energy commits that the Hawaiian Electric Companies and their operating utilities will not incur or assume any debt, including the provision of guarantees or collateral support, related to this merger or any future NextEra Energy acquisition.

Once again, while this new Commitment is laudable, it adds no additional protection for Hawaii ratepayers. The Applicants have previously promised that HECO Companies assets would not be used to secure other inter-corporate debt, nor would the HECO Companies make loans to its parent company.[2] More importantly, the acquisition of the HECO Companies by NEE provides NEE with ownership of the steady cash flow and income stream provided by Hawaii ratepayers, and it is that steady flow of monies that allows NEE to add additional debt leverage to its purchase of the HECO Companies—no contractual security commitment by the HECO Companies to NEE is necessary. Therefore, even with the promise that no HECO assets will be used to secure inter-corporate debt or that (in Commitment 61) the HECO Companies will not directly assume any merger-related debt, NEE has already included the [redacted] at the parent company level in its financial planning related to its acquisition of the HECO Companies.[3] Therefore, Commitment 61 offers no additional protection for Hawaii ratepayers.

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2 See Applicants Exhibit-37, Conditions 53 through 59.

3 See Applicants' response to CA-IR-128, Attachment 1 (Confidential).

- Commitment 62 – NextEra Energy commits to provide notice to the Commission within 10 days after a Form 8-K is filed with the SEC that indicates that the amount of goodwill on NextEra Energy's books has been impaired. As addressed in Commitment 65, rate recovery of any goodwill premium will not be sought.

This new Commitment (62), in my view, is beneficial, but adds little in the way of information that would increase the financial protections for the HECO Companies' ratepayers. Unless the already existing practice to file copies of S.E.C. filings with the Commission and Consumer Advocate is eliminated, having the Applicants' "flag" particular filings has limited usefulness.

I believe the concern being addressed with Commitment 62 is alerting the Commission to financial difficulties with the stated market value of NEE's unregulated investments, which certainly has some benefit. A writedown of goodwill (if goodwill is being included in the calculation of total common equity) would mean a reduction in NEE common equity, and, even though the Applicants have committed that goodwill would not impact the HECO Companies' balance sheet,[4] could be of importance in the financial status of NEE and, ultimately, the protection of Hawaii ratepayers. In my view, however, difficulties substantial enough to warrant a writedown of goodwill are unlikely to be discovered in an S.E.C. Form 8-K filing. They are more likely to be news-making events of which the Commission would be aware without the reporting required in this Commitment 62 (e.g., the tax advantage of wind power is rescinded by the

[4] See Applicants Exhibit-37, Commitments 65, 70 and 71.

US government, causing a substantial shift in the value of NEE's investment in that type of generation, or a serious nuclear accident at one of NEE's plants). In that regard, the reporting function in Commitment 62 offers little additional financial protections for Hawaii ratepayers.

- Commitment 63 - NextEra Energy commits to provide notice to the Commission if NextEra Energy or any of the Hawaiian Electric Companies are put on negative outlook or are downgraded below current bond ratings by any of the three major credit rating agencies (Standard & Poor's, Moody's Investors Service, or Fitch Ratings).

This Commitment 63 offers information content to the Commission that the HECO Companies would be likely to provide regardless of the existence of the pending acquisition, and is unnecessary. It is my experience that any less-than-positive credit rating agency reports are quickly reported to regulators by regulated utilities as "leverage" in the utilities' quest for favorable regulatory consideration.[5] As an example, in the instant case, all parties were quickly made aware of Moody's recent credit rating report regarding the pending acquisition.[6]

- Commitment 64 - The merger with NextEra Energy will have no effect on the standalone regulatory tax treatment of the Hawaiian Electric Companies. Note that the regulatory treatment of the standalone deferred tax asset related to net operating loss carryforwards is an open issue still to be resolved in a future general rate case. NextEra Energy will indemnify the Hawaiian Electric Companies for any liability for federal, state, or local income taxes (including interest and penalties related thereto, if any) in excess of the Hawaiian Electric Companies' standalone liability for federal, state, or local income taxes (including interest and penalties related thereto, if any) for any

[5] Two examples of how the HECO Companies have used the "leverage" of credit rating agency actions are illustrated in Docket No. 05-0310, Application, at 10; and Docket No. 2009-0089, Application at 6.

[6] See Applicants Exhibit-87.

period in which the Hawaiian Electric Companies are included in a consolidated income tax return with NextEra Energy.

While I am unfamiliar with the particulars of operating loss carryforwards and this issue is addressed in Consumer Advocate witness Brosch's rebuttal, with regard to parent company leverage, the promise to continue standalone regulatory tax treatment in Commitment 64 is not helpful to ratepayers. In fact, ignoring the amount of Federal income tax actually paid by the parent (by adhering to a "standalone" tax treatment) is an essential part of the problem of parent company leverage. Witness Brosch and I both recommend rejection of Applicants' newly proposed Commitment 64.

As discussed in detail in my Direct Testimony, following acquisition, the HECO Companies would not directly pay Federal tax, NEE would; subsequently, NEE, with substantially more debt than that which is included in the HECO Companies' "standalone regulatory tax treatment," will pay less Federal tax on its HECO investment and pretax income than ratepayers will. The "standalone regulatory tax treatment," in fact, is a key part of NEE's business plan, i.e., have ratepayers pay statutory tax rates on high equity ratios established for ratemaking purposes, while the parent pays lower income taxes based on higher interest expense reductions and lower equity ratios. Commitment 64 (apart from the issue of tax carryforwards) is not beneficial to Hawaii ratepayers from a financial viewpoint.

- Commitment 85 – Hawaiian Electric Holdings will not hold foreign utilities.

Although it is unlikely that the HECO Companies (or HEH, the intended holding company), with the capital requirements they face in the future, would be "in the market" for foreign utility acquisitions, I believe this is a moderately beneficial new Commitment.[7] That is because the "track record" of the utility industry with managing foreign energy or utility-related investments has not been a good one, and there are many risks involved.[8] One has only to look at NEE's 2013 experience with a solar energy infrastructure investment in Spain, which it is reported to have ultimately abandoned, to understand that there is substantial risk in foreign energy investments. If this Commitment 85 applied to NEE and its other subsidiaries, it would reduce parent company risk and have significantly more value to Hawaii ratepayers, but it does not.

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7 It would be practical, however, to obtain further clarity on this commitment. It is my understanding that, as defined in Hawaii's statutes, a foreign corporation is any corporation not organized under the laws of Hawaii. Thus, a "foreign utility" could be defined as any utility not organized under the laws of Hawaii. See: Hawaii Revised Statutes, §§ 269-17.5 and 235-1.

8 HEI has also experienced these risks. See the discussion in Mr. Nishina's testimony, CA EXHIBIT-1, p. 28.

Q. HAVE THE APPLICANTS SPECIFICALLY REJECTED CONDITIONS THAT YOU PROPOSED IN YOUR DIRECT TESTIMONY ON BEHALF OF THE CONSUMER ADVOCATE?

A. Yes. In Exhibit 55 in their Responsive testimony, the Applicants have listed proposed conditions recommended by the intervenors in this proceeding, including the CA. As I noted previously in my discussion of the new Conditions related to the proposed HEH "advisory board," the Applicants have rejected the CA's recommendation that HEH be formed with an actual voting board of directors like most subsidiary corporations, populated by at least four residents of Hawaii, in order that Hawaii residents have actual, official input into HEH corporate decisions. (See Exhibit-55, Proposed Conditions 239, and 240) I previously voiced my concerns with the Applicants' "advisory board."

The Applicants also rejected my recommended condition that one of the members of the HEH board be an independent director who has sole power to move the HECO Companies into bankruptcy. (See Applicants Exhibit-55, Proposed Condition 241). As a "response" to Proposed Condition 241 requesting an independent director on an actual board of directors, the Applicants cite their Conditions 20 through 31, which offer an "advisory board" from all the counties in which the HECO Companies operate as well as other local management commitments, addressed previously.

However, the Applicants do not address the fundamental reason the independent director was suggested ring-fencing. While the Applicants (primarily through witness Lapson) do address other intervenor suggested conditions regarding ring-fencing, they do not do so with the CA's suggested ring-fencing proposals, and the rejection of the CA's proposed condition of an independent director as only part of the condition that HEH have a traditional board of directors, does not address its importance for ring-fencing purposes.

Q. CAN YOU EXPLAIN WHY THE APPLICANTS' REJECTION OF AN INDEPENDENT DIRECTOR UNDER THE CATEGORY "LOCAL GOVERNANCE" RATHER THAN "CAPITALIZATION AND FINANCING" (WHERE OTHER RING-FENCING PROPOSALS ARE ADDRESSED) MISSES THE POINT?

A. Yes. At pages 76 through 85 of CA-EXHIBIT-7 in this proceeding I outlined my suggestions on behalf of the CA for ring-fencing HEH in order to provide financial protection for Hawaii ratepayers from the risks of unregulated operations at other NEE affiliates. In that lengthy discussion, I noted that with the creation of an actual, voting board of directors for Hawaii Electric Holdings, along with the installation of an independent director and a non-consolidating opinion (indicating that NEE would not seek to consolidate its HECO assets with those of NEE in the event of financial distress), it could be possible to avoid the creation of a Special Purpose Entity (SPE). An SPE is simply a shell company created to reside between the parent and the utility to provide a means through which a non-affiliated authority

(e.g., independent director, or corporate agent) retains the sole authority to move the utility into bankruptcy so that bankruptcy determination cannot be made by the holding company or its parents.

While I have no objections to the creation of an SPE if that proves to be a more efficient way in which to ring-fence the HECO Companies, I did not recommend the creation of an SPE in this instance because another of the CA's Recommended Conditions is the installation of an actual voting board of directors for HEH. It remains my view that it would simply be more efficient to have one and not two layered corporate parents for the HECO Companies, and that the bankruptcy protection afforded by an independent director with bankruptcy control and a non-consolidating opinion could be realized through HEH and its board of directors.

Again, prior to moving on to other issues, I want to emphasize that I have no reluctance regarding the creation of an SPE. It is a reasonable manner in which to undertake ring-fencing and has been successfully utilized in other mergers. In fact, an SPE for ring-fencing purposes was endorsed by Applicants' witness Lapson in her recent testimony before the Maryland PUC in the Exelon/PHI merger proceeding. (Case No. 9361, Rebuttal Testimony of Ellen Lapson, January 7, 2015, CA-IR-448, Attachment 1, p. 22).

> The purpose of the ring-fencing is to preserve the viability of PHI and its operating subsidiaries in the unlikely event of Exelon's bankruptcy or corporate distress, and the proposed measures are quite robust and will meet the objective.

I elected not to recommend the creation of an SPE in this instance because I believe the same end result can be accomplished (protecting the HECO Companies from NEE financial distress) within an HEH board of directors. If the Commission elects to approve the pending acquisition without also requiring an actual board of directors for HEH, then, in order to adequately ring-fence HECO, the creation of an SPE will be necessary.

In addressing the CA's ring-fencing proposal, however, the Applicants' Responsive testimony addresses only the inclusion of an independent director as unnecessary because, in their view, an "advisory board" is sufficient to protect Hawaii ratepayers. As noted above, that assessment of CA's ring-fencing-related Recommended Condition to install an independent director with sole bankruptcy control, is incomplete and misses the broader and more important perspective-protecting the financial well-being of the HECO Companies and their ratepayers.

Q. IN THEIR EXHIBIT-55, DID THE APPLICANTS REJECT OTHER PROPOSED FINANCIAL CONDITIONS OFFERED BY THE CA?

A. Yes. Due to the facts that: 1) the proposed transaction includes consideration of a 4-year rate moratorium, 2) the going-forward rates are based on the prior rate case-allowed capital costs,[9] and 3) there have been reductions in capital cost rates

[9] See Applicants' response to CA-IR-415.

since those prior capital costs were determined, in order to provide ratepayers an opportunity to realize the benefits of those lower current capital costs and other merger savings, the CA recommended as an additional Condition, that the cost of long-term debt, common equity and the capital structure be updated to determine rates during the proposed rate moratorium. Absent such updating to reflect actual, market-based capital costs lower than those included in present base rates, the HECO Companies and their new owners would be advantaged (i.e., they would earn a return on capital investment higher than their cost of capital) while ratepayers would be disadvantaged by continuing to pay overstated rates of return. As such, I recommended that going-forward rates during the rate moratorium be updated using an ROE of 9.0% and a ratemaking common equity ratio of 47%. In Exhibit-55, the Applicants list the CA Rate Plan ROE and common equity ratio as Proposed Conditions 204 and 205, and reject them both.

Q. DOES THE APPLICANTS' REJECTION OF THE CA RATE PLAN'S ROE AND CAPITAL STRUCTURE INDICATE THAT YOUR RECOMMENDATION IS INAPPROPRIATE?

A. No. In the following section of this testimony, in which I discuss the Applicants' response to issues raised in my Direct Testimony, I will show that my recommendations for ROE and capital structure are not only reasonable but also are directly supported by evidence in the record in this proceeding. For example, the investors' required return utilized by HEI's financial advisor (JP Morgan) in

determining the appropriate price that NEE would pay for the HECO Companies' assets, contained in Applicants' response to CA-IR-120 (Confidential and Restricted) supports my ROE recommendation and shows it to be conservative. Also, the manner in which NEE plans to capitalize its investment in the HECO Companies, previously discussed in my Direct Testimony, shows that my recommended ratemaking common equity ratio is similarly conservative.

Q. DOES THIS CONCLUDE YOUR DISCUSSION OF THE APPLICANTS' NEWLY OFFERED CONDITIONS AND THEIR OPINIONS REGARDING THE CA'S RECOMMENDED CONDITIONS RELATED TO FINANCIAL ISSUES?

A. Yes, it does.

III. ISSUES RAISED IN APPLICANTS' RESPONSIVE TESTIMONY.

Q. PLEASE SUMMARIZE THE FINANCIAL ISSUES RAISED IN THE APPLICANTS' RESPONSIVE TESTIMONY.

A. Several issues are raised by Applicants' witnesses in response to my Direct Testimony on behalf of the CA regarding the cost of equity capital and ratemaking capital structure I recommended for the CA's recommended Rate Plan. Issues regarding the cost of equity and capital structure are addressed by Applicants' witnesses Sekimura and Lapson. Neither of those witnesses have filed cost of capital testimony in a regulated rate proceeding. In addition, Applicants' witness Reed provides testimony related to my concerns regarding the use of

parent company leverage to finance NEE's acquisition of the HECO Companies and the financial cross-subsidization that occurs because of that strategy.

Q. HAS THE APPLICANTS' RESPONSIVE TESTIMONY CAUSED YOU TO CHANGE YOUR INITIAL OBSERVATIONS OR RECOMMENDATIONS IN ANY WAY?

A. No. The 9.0% return on equity and 47% common equity ratio I recommend to be utilized in the CA's customer benefit Rate Plan are reasonable and are designed to ensure that NEE and the HECO Companies are able to continue to attract the capital necessary to undertake and fulfill their public service obligations. Also, the Applicants' plan to leverage the revenue and income stream of the HECO Companies for shareholder benefit while requiring ratepayers to "pay the freight" on a ratemaking capital structure that contains much less inexpensive debt and much more expensive common equity than employed by NEE to capitalize the HECO Companies' assets remains unfair and Mr. Reed's comments on that subject are off-point and not persuasive. Moreover, as explained in detail in my Direct Testimony, NEE's corporate policy of financing its unregulated operations cheaply (with more debt) and its regulated operations expensively (with greater-than-average common equity) actively withholds the benefits of lower

cost capital from ratepayers while passing those benefits on to shareholders.[10] That capital structure policy is classic financial cross-subsidization (having the rate-regulated business subsidize the unregulated business) and, in combination with the lack of transparency regarding parent company leverage (also discussed in my Direct Testimony), continues to provide rationale to conclude that the proposed transaction is not in the public interest.

A. APPLICANTS' WITNESS SEKIMURA.

Q. WHAT ARE THE FINANCIAL ISSUES RAISED IN THE RESPONSIVE TESTIMONY OF APPLICANTS' WITNESS SEKIMURA AND WHAT ARE YOUR COMMENTS REGARDING THOSE ISSUES?

A. Ms. Sekimura discusses her concerns regarding my recommended Rate Plan cost of equity and ratemaking common equity ratio at pages 42 through 52 of her Responsive Testimony (Applicants Exhibit-79). The issues she raises are:

- the proposal is "arbitrary, unsupported, unreasonable and contrary to the principles considered by the Commission in making ROE determinations;"
- the CA's proposal is not HECO-specific and "relies on an estimate…of the cost of equity of very different companies thousands of miles away;"

[10] Mr. Gleason indicates in the response to CA-IR-404 that HECO's common equity ratio is 56.06%, while NEE's common equity ratio is 42.04%. Also, Mr. Dewhurst, in CA-IR-425(b) indicates that NEECH (which holds NEE's unregulated operations) has a common equity ratio of 25.5%.

- the Commission in prior decisions has recognized that the HECO Companies have greater than average risk;
- the proposed ROE is below the average level awarded in the U.S. in 2014;
- the proposed ROE is based only on a DCF analysis;
- the proposed 47% equity ratio is for companies that have allowed ROEs higher than 9.0%.

Q. HOW DO YOU RESPOND TO THE ISSUES RAISED BY MS. SEKIMURA?

A. My 9% ROE recommendation is neither arbitrary nor unsupported. It is based on a very detailed, recent cost of equity analysis of the electric utility industry and was submitted by me in a recent Federal Energy Regulatory Commission (FERC) complaint proceeding in which the current cost of equity of electric utilities is the key issue. I cited that testimony and the FERC docket number, and that testimony is publicly available. As Ms. Sekimura correctly notes my cost of equity estimates for the electric utility industry in that proceeding were 8.85% (filed in February 2015) and 8.75% (updated in July 2015). (Applicants Exhibit-79, p. 43) The ROE I recommend for the CA's suggested customer benefit Rate Plan, 9.0%, is higher than the current cost of equity capital for the electric utility industry.

In addition, the fundamental "principles considered by the [Hawaii] Commission in making ROE determinations," i.e., *Hope* and *Bluefield,* are also the principles on which FERC bases its determination of the cost of common equity capital. Therefore, Ms. Sekimura's concern that my recommended 9% ROE,

which is based on my recently-submitted cost of capital testimony before FERC, is contrary to sound ratemaking principles, is simply incorrect. Finally, with regard to Ms. Sekimura's concern that my recommended ROE is unreasonable, there is information in the record in this proceeding that was apparently relied on by HEI in evaluating the proposed transaction, and which indicates that my recommended 9% ROE for the CA's suggested Rate Plan is conservatively high and eminently reasonable.

Q. TO WHAT INFORMATION ARE YOU REFERRING?

A. In response to CA-IR-120, which requested that the Applicants provide certain transaction-related documents that were referenced in their S.E.C. S-4 filing regarding the proposed transaction, the Applicants in a (September 4, 2015) supplement to their original response provided several reports by JP Morgan (HEI's financial advisor in the transaction). Those JP Morgan reports were "Fairness Opinions" which were presented to the HEI Board of Directors at various stages of the transaction negotiations (July 2014 through December 2014).

One of the primary points of analysis by JP Morgan in those Fairness Opinions undertaken on behalf of the HEI Board was the sufficiency of the per-share price offered by NEE for HEI's utility assets, and one of the key variables used in determining the sufficiency of that offered price [redacted]. That is, [redacted], and the cash

flows expected to be produced by that investment, what is a reasonable valuation for HEI?

The information in that report is deemed both Confidential and Restricted and, for that reason, I will redact [redacted] presented to the HEI Board. JP Morgan's Fairness Opinion presented to the HEI Board of Directors on December 3, 2014, just before the deal was announced, is entitled "[redacted]." (Applicants' Response to CA-IR-120, Attachment 15, p. 231). That portion of the December 2014 Fairness Opinion shows JP Morgan's [redacted]. (See CA-IR-120, Attachment 15, p. 218). While the [redacted] confirms the reasonableness of NEE's stock price offer to HEI, the [redacted] recommended 9% return.

This proposed transaction is underway because the HEI Board of Directors accepted the opinion of their financial advisor, JP Morgan, based on [redacted] which determined that the per share price offered by

NEE for HEI's utility assets was reasonable. Thus, my recommended 9% ROE for the CA's Rate Plan is [redacted] Ms. Sekimura's company accepted as providing a reasonable return in the proposed transaction. The record in this proceeding (albeit Confidential and Restricted) shows that my ROE recommendation is reasonable for ratemaking purposes.

Q. HOW DO YOU RESPOND TO MS. SEKIMURA'S OTHER CONCERNS?

A. First, with regard to Ms. Sekimura's concerns that my cost of equity estimate is based on other electric utility companies that are "thousands of miles away," I would note that analyzing the market data of other U.S. utilities is a necessary factor in estimating the cost of equity appropriate for the HECO Companies. It is not possible to undertake that analysis without utilizing the market data of companies that are far away from Hawaii. The JP Morgan reports cited previously also rely on [redacted] in assessing the reasonableness of NEE's offer for HEI. Those companies are thousands of miles away from Hawaii. The HECO Companies' often-used cost of capital witness, Dr. Roger Morin, when he estimates the cost of equity for the HECO Companies, uses a large sample of U.S. electric utilities.[11] Dr. Morin's sample group is comprised of companies that are thousands of miles away from Hawaii.

[11] See, for example, Docket No. 2011-0092, MECO-1901, pp. 1, 2.

In order to accurately assess the market-based cost of common equity, it is necessary to analyze the market data of a sample group of similar risk companies. While most of those companies are a considerable distance away from Hawaii, the geographic distance does not mean the operations or relative risks of those companies are not generally similar to the risks of the HECO Companies' utility operations.

Second, it is true that the Commission in prior decisions had recognized that the investment risks in Hawaii were somewhat higher than those of mainland electric utilities. However, with the advent of decoupling along with ECAC, PPAC, and other piecemeal rate adjustment mechanisms that dramatically reduce earnings volatility for the HECO Companies, any business risk differential has subsided and the Hawaii Commission has recognized that reduced risk (e.g., Decision and Order No. 31288, filed on May 31, 2013, in Docket No. 2011-0092 (MECO 2012 rate case)).

Third, Ms. Sekimura points out that the equity returns recently allowed in other jurisdictions have been higher than the CA's recommended 9.0% return-the average for the first half of 2015 was 9.59% (Applicants Exhibit-79, p. 47). While Ms. Sekimura is correct in this observation that does not indicate that a 9% ROE is unreasonable for consideration in the CA's Rate Plan.

Given the fact that rate case proceedings generally last six to twelve months, it is reasonable to believe that the returns recently allowed by other jurisdictions are based on cases that were adjudicated in prior periods when capital

costs, which have been trending downward for years, were likely higher. It is also true that allowed returns generally lag the actual cost of capital. Therefore, while the recent average of allowed returns in other jurisdictions has been somewhat higher than the actual cost of capital, that does not mean that, with a recent average allowed return of 9.6%, a ratemaking cost of equity for the HECO Companies of 9% is unreasonable. In that regard, it is noteworthy that the Kansas Corporation Commission in a September 2015 Order in a Kansas City Power & Light Company rate proceeding (Docket No. 15-KCPE-116-RTS) awarded that company a 9.3% ROE.[12] As noted previously, the efficacy of the transaction before the Commission in this proceeding is based on an investor-required return (cost of equity capital) [redacted].

Fourth, Ms. Sekimura's expressed concern that my cost of equity estimate recently presented at FERC (8.75%) is based solely on a DCF analysis is simply incorrect. In that FERC testimony, in addition to the two-stage DCF model preferred by FERC, I also presented a CAPM analysis and an Earnings-Price Ratio/Expected Earnings analysis. The additional analyses confirmed that the FERC-based DCF analysis was reasonable, therefore, my equity cost estimate was not based solely on a DCF analysis. In fact, even though I believe that the DCF model is the most reliable indication of the cost of equity, in testifying in more than 300 rate proceedings, I have never relied on only one single equity cost

[12] Also, Applicants' response to CA-IR-432, Attachment 1 (Confidential), the source of Ms. Sekimura's ROE data shows that there have been two cases thus far in 2015 in which the allowed ROE was [redacted].

estimation methodology—the DCF or any other method. When asked in CA-IR-433 to provide copies of any of my prior testimonies in which I had used only the DCF, Ms. Sekimura provided none.

Fifth, Ms. Sekimura expresses a concern regarding my recommended ratemaking equity ratio of 47%, which was the average common equity ratio of the electric industry as reported by A.U.S. Utilities Reports. She states that the electric utility companies included in the A.U.S. report have an average allowed ROE above 9.0%, implying that my recommended common equity ratio should be higher to "offset" the lower allowed ROE. However, what Ms. Sekimura does not point out is that the majority of the electric utilities included in the A.U.S. Utility Reports cited were awarded returns prior to 2011 and one utility's rate case was as far back as 2001. Those allowed returns do not represent current equity capital cost rates, because capital costs have declined since 2011.

Finally on this point, the average allowed return for those companies produces a current market price-to-book value ratio for those same electric companies of about 1.6 times (a statistic also reported by A.U. S. Utilities). That means that the current cost of equity is substantially below the current allowed ROEs for those companies because investors are providing market prices for those companies that are significantly higher than their book value earnings base. Again, a 9% ROE is reasonable, given the statistics published by A.U.S. and cited by Ms. Sekimura.

B. APPLICANTS' WITNESS LAPSON.

Q. WHAT ARE THE FINANCIAL ISSUES RAISED IN THE RESPONSIVE TESTIMONY OF APPLICANTS' WITNESS LAPSON AND HOW DO YOU RESPOND TO THOSE ISSUES?

A. Ms. Lapson, at page 41 of Applicants Exhibit-56, raises one of the same points raised by Ms. Sekimura, namely that the average allowed return for electric utilities has been higher than 9%. While Ms. Lapson cites an average over a longer period than Ms. Sekimura and, in so doing, produces a higher comparator, the point she is trying to make is the same as that discussed above regarding Ms. Sekimura's testimony. My point in response is the same as well. Capital costs are continuing to decline and regulators are recognizing that fact, but are responding at a rate slower than capital costs are falling. The older data embedded in the historical average returns are not equivalent to the current cost of equity capital. As noted, there was a recent (September 2015) ROE decision by the Kansas Corporation Commission of 9.3%. Finally, the average market price being paid for electric utility stocks is more than 150% of the book value or earnings base for those utility stocks. Therefore, the market-based return required by investors who purchase those stocks is substantially below the allowed ROE, which is the return that the utility can earn on its book value. Again, given the data cited by Ms. Lapson, a cost of equity estimate of 9% is well supported.

Q. DOES MS. LAPSON ALSO TAKE ISSUE WITH YOUR PROPOSED COMMON EQUITY RATIO OF 47 PERCENT?

A. Yes. Ms. Lapson notes that the 47% common equity ratio I recommend, which is the average common equity ratio for the market-traded electric utility industry reported by A.U.S. Utility Reports, is about 3% below the average common equity ratio for stand-alone electric utility companies.[13] Although Ms. Lapson does not provide a source for her data nor does she indicate whether or not her average common equity ratio includes consideration of short-term debt, the industry data with which I am familiar confirm that the average common equity ratios for stand-alone utility firms are a bit higher than the average for their market-traded holding companies. However, it is the capital ratios of the *market-traded* holding companies that are germane to the cost of equity capital, not the common equity ratios Ms. Lapson cites.

For example, an investor cannot buy a share in MECO. In order to own a portion of MECO, an investor, currently, must purchase a share of HEI. The capital structure of importance to that investor and the capital structure that determines the financial risk and the required return, then, is that of HEI, not MECO. Similarly, the capital structure that is appropriate for the cost of equity capital determined by an analysis of the market data of the electric utility industry is the average capital structure of those market-traded companies. That average is 47%

[13] Applicants Exhibit-56, p. 41.

common equity, and it is appropriate for use with a ratemaking ROE of 9%.

Q. DOES MS. LAPSON ALSO PROVIDE AN OPINION REGARDING YOUR ROE AND CAPITAL STRUCTURE RECOMMENDATION AND WHETHER OR NOT THEY MEET STATUTORY REQUIREMENTS?

A. Yes. Ms. Lapson provides her opinion that my recommendation for a Rate Plan using a 9% ROE and a 47% common equity ratio would not satisfy the capital attraction standard pursuant to *Hope* and *Bluefield.*[14] However, as I previously noted, Ms. Lapson is not a cost of capital expert and has provided no analysis in her Responsive Testimony to show that a 9% ROE coupled with a ratemaking common equity ratio of 47% would fail the *Hope* and *Bluefield* standards. In my view, my recommendations are well supported, for reasons previously discussed.

Q. DO THE PRIOR FERC DECISIONS CITED BY MS. LAPSON INDICATE THAT YOUR RECOMMENDATIONS ARE UNREASONABLE?

A. No. Ms. Lapson correctly notes that FERC's most recent equity return award for electric utilities was 10.57%.[15] However, she omits several important corresponding facts regarding that FERC decision.

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[14] Applicants Exhibit-56, p. 41.

[15] Applicants Exhibit-56, p. 42.

First, the case to which Ms. Lapson refers (FERC Docket No. EL11-66-001) was filed in 2011 and based on record evidence in 2012. Capital costs have declined since that time. Second, the mid-point of the cost of capital results in that proceeding, as determined by FERC, was 9.39%. However, based on an assumption that interest rates would rise dramatically over the near term from then-current levels, FERC declared that due to unusual capital market conditions, the return allowed would be set in the upper half of a "reasonable range" (halfway between the mid-point and the highest ROE estimate). This forward-looking adjustment is what produced the 10.57% ROE cited by Ms. Lapson. The expectations of dramatically increasing interest rates did not come to pass and, instead, interest rates have continued to decline, indicating that the mid-point of the FERC's cost of capital range (9.37%) was a more accurate estimate of the cost of equity for electric utilities in 2012. Finally on this point, if a 9.37% cost of equity was reasonable in 2012, a 9% cost of equity is reasonable today, given the fact that interest rates today are below the level that existed in 2012.[16]

Third, as I noted in my Direct testimony, my 9.0% cost of equity recommendation is based on the cost of equity analysis I performed in a recent FERC complaint proceeding. Although Ms. Lapson did not offer cost of capital testimony in that proceeding, she was also a witness in that recent FERC proceeding. However, Ms. Lapson fails to report that her co-witness in that recent

[16] Federal Reserve Statistical Release H.15, average Moody's BBB-rated corporate bond yield in 2012 = 4.94%; 2015 (through August) = 4.80%.

FERC proceeding, Dr. William Avera, using the FERC-sanctioned two-stage DCF model, estimated the cost of common equity capital to range from 9.16% to 9.70% (FERC Docket No. EL14-12-002, Exhibit MTO-23, Cross-Answering Testimony, June 15, 2015). While Dr. Avera also requested that the FERC focus on higher alternate cost of equity results, his DCF estimates of the current cost of equity based on FERC's recommended DCF analysis support the reasonableness of an ROE in the 9% range.

C. APPLICANTS' WITNESS REED.

Q. WHAT ARE THE FINANCIAL ISSUES RAISED IN THE RESPONSIVE TESTIMONY OF APPLICANTS' WITNESS REED AND HOW DO YOU RESPOND TO THOSE ISSUES?

A. At pages 202 through 204 of Applicants Exhibit-50, Mr. Reed summarizes his concerns with my testimony of behalf of the CA regarding the impact on ratepayers of the use of parent company leverage. However, Mr. Reed's characterization of my testimony is inaccurate and, thus, his Responsive Testimony is off-point. For example, Mr. Reed states that I am concerned that the use of parent company leverage would increase risk for regulated utilities.[17] While the issuance of additional debt by the parent company will increase its financial risk and, therefore, the financial risk of the corporate family, that is not the heart of my concern with

[17] Applicants Exhibit-50, p. 202.

parent company leverage. Rather, I am concerned about Applicants' desire to use upstream debt financing to achieve a lower overall cost of capital while denying Hawaii ratepayers participation in those benefits.

As discussed in my Direct Testimony, the steady income stream of a regulated electric utility will safely support a certain amount of debt. As I noted, the 47% average common equity ratio existing today in the electric utility industry supports an average credit rating of BBB+/A-. (CA Exhibit-7, p. 35). If that industry-average common equity ratio were increased, the credit rating of the industry could, in theory, be improved; but the increase in capital cost to the ratepayer would be dramatic. That is because, on a rate-making (pre-tax) basis, common equity dollars cost about three times what long-term debt dollars cost (i.e., the pre-tax cost of equity is roughly three times greater than the cost of debt). Applicants' desire to retain an overstated ratemaking common equity ratio and the resulting higher ratemaking capital cost level is unnecessary because electric utilities are financially healthy at a common equity ratio of 47%, and the cost to ratepayers of that financial mix is lower than it would be with a higher common equity ratio.

NextEra is familiar with the windfall to be achieved in structuring debt outside its regulated utility subsidiaries, given its track record with Florida Power and Light (supporting a higher than average common equity ratio), and NEECH

(supporting a common equity ratio well below average).[18] NEE's corporate blueprint is one that over-capitalizes (uses more equity capital than necessary) its demand-inelastic utility properties and undercapitalizes (uses less equity capital than necessary) its competitive unregulated properties. In that way, its regulated subsidiaries are providing more in capital costs than would be the case if they were normally capitalized, and NEE's unregulated subsidiaries will realize the benefits of lower equity ratios, higher debt ratios and lower capital costs. In the NEE model, regulated ratepayers will not receive the benefit of lower-cost debt financing, will be required to pay higher equity capital costs plus the income taxes on that capital, while NEE's unregulated operations are capitalized with more debt than they would be able to support on a stand-alone basis and have lower capital costs than they would on a stand-alone basis.

Therefore, my concern with the financial cross-subsidization embedded in the NEE corporate structure is not primarily about risk, as Mr. Reed incorrectly posits, it is about cost, and fairness. The stable and decoupling-assured revenues contributed by regulated ratepayers in Hawaii should benefit from rate case recognition of the lower-cost debt to finance necessary plant additions, but it will not be under Applicants' approach. Rather, Hawaii ratepayers, under the NEE corporate capitalization model will be required to support an expensive capital structure (one with more equity) while the unregulated operations are attributed

[18] CA-IR-398, p. 2, FPL Common Equity Ratio ≈ 60% of total capital; CA-IR-425, NEECH Common Equity Ratio ≈ 25% of total capital.

more low-cost debt with the consolidated business. The net income windfall that effectively results from that flow of funds from ratepayers to the unregulated subsidiaries eventually is realized by NEE's shareholders. That, in my view, does not constitute the "balancing" of interests of ratepayers and investors often cited as a goal of regulation. That is the key problem with financial cross-subsidization, the high-equity capital structure used for the utilities costs ratepayers more than it should, and the unregulated firms are able to benefit from that by capitalizing with low equity and high debt ratios.

Q. MR. REED CLAIMS THAT YOU DO NOT RECOGNIZE NEE's PROMISE NOT TO TAKE ON ANY DEBT AT EITHER THE UTILITY OR HEH LEVEL AND THAT, UNDER A "'STAND ALONE' PRINCIPLE OF RATEMAKING," THERE ARE NO EFFECTS FROM THE FINANCING OF THE PROPOSED TRANSACTION.[19] IS THAT CORRECT?

A. No. First, I discussed in my Direct Testimony the fact that NEE does not need to issue debt at the utility or HEH level to encumber the income stream of the HECO Companies for payment of the upstream debt. The utilities' income stream provides the financing capability and the debt funded by that income stream can be issued at a level above HEH. In fact, that is exactly what NEE plans to do. Again, as discussed in detail in my Direct Testimony, NEE included in the financial

[19] Applicants Exhibt-50, p. 203.

projections accompanying its planned acquisition of the HECO Companies, the [redacted] at a corporate level above HEH.[20] That sort of transaction would be undertaken without any knowledge by this Commission or any other stakeholders, except for the fact that we are able to review NEE's financial projections in this proceeding.

Importantly, the [redacted] at the parent level is not something that *might* happen, it is part of NEE's financial plan, and underscores another negative aspect of parent company leverage-transparency. NEE, and more specifically, NEECH can undertake debt issuances to extend parent company leverage based on HECO Companies' revenue and income expectations without any knowledge by Hawaii regulators. NEE's promise to not issue debt at the utility or HEH level does not have any impact on the risk pertaining to parent company debt. Moreover, NEE representatives have publicly stated that NEE's purchase of HEI's utility assets would be funded entirely with equity—no additional debt will be issued. But additional debt will be issued—at the parent company level, beyond the regulatory oversight of this Commission. CA-EXHIBIT-9 attached to my Direct Testimony shows how the HECO assets will be effectively capitalized following the issuance of this additional debt. This aspect of the transaction is especially troubling.

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[20] CA Exhibit-7, pp. 29-34, CA Exhibit-9.

Mr. Reed also testifies that under a "stand alone" concept of ratemaking there is no harm to the ratepayers with parent company leverage, because ratepayers would pay the same rates whether or not the parent issues additional debt.[21] However, Mr. Reed again misses the point. If the parent issues additional debt financially leveraging its utility ownership, those additional debt costs must eventually be funded by the cash flows from the regulated subsidiary. Unfortunately, under Mr. Reed's "stand alone" approach, ratepayers of the regulated subsidiary will be prohibited from realizing any cost reduction benefits of the lower cost of debt. The interest cost associated with the additional parent debt will lower the parent's income tax responsibility and the higher taxes paid by the regulated subsidiary (through a "standalone" treatment Mr. Reed references) will provide additional cash flow and profits to the parent.

The existence of the additional parent debt shows that the utility subsidiary could, and, arguably, should be financed with a more cost-effective mix of capital (more debt and less equity); but adhering to a "stand alone" treatment of income taxes instead of ensuring that ratepayers pay the income tax actually paid by the parent after deducting that additional interest, would be harmful to ratepayers. Thus, Mr. Reed's claim that ignoring parent company debt and the lower taxes actually paid does not affect ratepayers is incorrect.

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[21] Applicants Exhibit-50, p. 204.

Q. MR. REED ALSO STATES THAT THE APPLICANTS HAVE PROPOSED SEVERAL RING-FENCING MEASURES TO INSULATE THE HECO COMPANIES FROM NEE AND ITS AFFILIATES.[22] DO YOU AGREE?

A. I do agree that the Applicants have proposed conditions that would prevent the HECO Companies from issuing debt for NEE, securing debt obligations of another NEE subsidiary, participating in corporate money pool operations, maintaining their own credit ratings, and other minor suggestions. However, those conditions do not constitute a reliable ring-fence that would protect the HECO Companies financially in the event of financial difficulty at NEE. I have discussed the reasons why the Applicants' "ring-fencing" Commitments (both original and new) are insufficient and where they need to be augmented. I will not revisit that discussion here. Absent the more robust ring-fencing measures I recommend, the proposed transaction in not in the public interest and should not be allowed to proceed.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

[22] Applicants Exhibit-50, pp. 203, 204.

CA Exhibit-29
DOCKET NO. 2015-0022

REBUTTAL TESTIMONY

OF

MICHAEL L. BROSCH

ON BEHALF OF
THE DIVISION OF CONSUMER ADVOCACY

SUBJECT: **Projected Transaction-enabled Cost Savings, Proposed Rate Plan Benefits, Other Accounting and Ratemaking Concerns, Consumer Advocate Ratemaking Conditions**

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REBUTTAL TESTIMONY OF MICHAEL L. BROSCH

I. INTRODUCTION AND SUMMARY.

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Michael L. Brosch. My business address is P.O Box 481934, Kansas City, Missouri 64148.

Q. ARE YOU THE SAME MICHAEL L. BROSCH WHO SUBMITTED DIRECT TESTIMONY AND EXHIBITS IN THIS DOCKET?

A. Yes. My Direct Testimony is identified as CA Exhibit-11 and my Educational Background and Experience are summarized in CA Exhibit-12. I also prepared the Consumer Advocate's proposed Rate Plan that was documented within CA Exhibit-13, the Consumer Advocate Rate Plan Workpapers.

Q. ON WHOSE BEHALF ARE YOU NOW APPEARING?

A. I am again testifying on behalf of the Consumer Advocate in this proceeding.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. In accordance with the Commission's Decision and Order No. 33116, my Rebuttal Testimony responds to the Applicants' Responsive Testimonies that were filed on August 31, 2015. In this testimony, I address and explain the Consumer Advocate's position with respect to the Applicants' Responsive

Testimony in the following issue areas that were originally presented in my Direct Testimony:

- Projected Transaction-enabled cost savings,
- Rate Plan Issues,
- Other Accounting and Ratemaking Issues; and
- Proposed Ratemaking Conditions.

In these four issue areas, my Rebuttal Testimony responds to Applicants' witnesses Messrs. Gleason, Reed and Ms. Sekimura, while clarifying the Consumer Advocate's conclusions and recommendations that may have been misunderstood or improperly characterized within Applicants' Responsive testimony.

Q. WHAT INFORMATION HAVE YOU REVIEWED AND RELIED UPON IN PREPARING YOUR REBUTTAL TESTIMONY?

A. I have reviewed and relied upon the Responsive Testimonies of Applicants' witnesses and the Exhibits sponsored by these witnesses, as well as the responses to Information Requests that have been provided by Applicants since the Consumer Advocate's Direct Testimony was submitted.

Q. AFTER REVIEW OF APPLICANTS' RESPONSIVE TESTIMONY, ARE YOU CHANGING ANY OF THE CONCLUSIONS STATED WITHIN YOUR DIRECT TESTIMONY IN CONNECTION WITH THE LIST OF ISSUES IDENTIFIED IN ORDER NO. 32739?

A. No. My Rebuttal Testimony continues to support, from a regulatory accounting and ratemaking perspective,[1] the following recommendations regarding the issues listed by the Commission in Order No. 32739:

Issue Number	Issue Description	Ratemaking Perspective Response:
1	Whether the Proposed Transaction is in the public interest.	No
1a	Whether approval of the Proposed Transaction would be in the best interests of the State's economy and the communities served by the HECO Companies.	No
1b	Whether the Proposed Transaction, if approved, provides significant, quantifiable benefits to the HECO Companies' ratepayers in both the short and the long term beyond those proposed by the HECO Companies in recent regulatory filings.	No

[1] As noted in footnote 3 in my Direct Testimony, other Consumer Advocate witnesses are addressing the issues identified by the Commission with regard to utility service quality, societal and cultural concerns, affiliated interest concerns, clean energy transformational concerns and the other issues identified in the Commission Order No. 32739.

2	Whether the Applicants are fit, willing, and able to properly provide safe, adequate, reliable electric service at the lowest reasonable cost in both the short and the long term.	Not at lowest reasonable cost.
2a	Whether the Proposed Transaction, if approved, will result in more affordable electric rates for the customers of the HECO Companies.	No
6	Whether any conditions are necessary to ensure that the Proposed Transaction is not detrimental to the interests of the HECO Companies' ratepayers or the State and to avoid any adverse consequences and, if so, what conditions are necessary?	Yes

Q. HOW IS YOUR REBUTTAL TESTIMONY ORGANIZED?

A. My Rebuttal Testimony follows the same topical sections used in my Direct Testimony, as outlined in the index presented above.

II. PROJECTED TRANSACTION-ENABLED COST SAVINGS.

Q. IN RESPONSIVE TESTIMONY, HAVE THE APPLICANTS EXPANDED THE SCOPE AND SIZE OF THE CLAIMED COST SAVINGS AND OTHER ESTIMATED ECONOMIC BENEFITS THAT MAY RESULT FROM THE PROPOSED MERGER?

A. Yes. According to Applicants' witness Mr. Gleason, "[w]e estimate that the merger will produce nearly $1 billion in customer savings and other economic benefits in the first five years after the merger is consummated and benefits will

continue to be created for the long-term… [t]his ongoing work and the quantification of savings and benefits are discussed in detail in the Responsive Testimony of Applicants' witness Reed."[2] For his part, Mr. Reed states, "NextEra Energy has updated its merger savings analyses, with our assistance. In contrast to the mix of preliminary company-specific and peer-group analyses that were presented in my Direct Testimony, the analysis now relies exclusively on more-detailed company-specific savings estimates."[3] Both Messrs. Gleason and Reed translate the ratepayer portion of estimated costs savings, excluding "economic benefits," to conclude that new rate reduction benefits could accumulate to a range of $343 to $473 per residential customer across the islands for the first five years after the merger is closed.[4]

Q. ARE APPLICANTS' CLAIMS OF "NEARLY $1 BILLION IN CUSTOMER SAVINGS AND OTHER ECONOMIC BENEFITS" FROM UPDATED MERGER SAVINGS ANALYSES CREDIBLE?

A. No. As discussed in greater detail in this section of my rebuttal testimony, the "customer savings" portion of this new and more expansive claim appear to be greatly exaggerated. Consumer Advocate witness Mr. Comings responds in his

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2 Applicants Exhibit-36, pages 59-60.

3 Applicants Exhibit-50, page 15.

4 Applicants Exhibit-36, page 61 and Exhibit-50, page 17.

rebuttal to the "economic benefits" portion of this claim and I understand that he reaches a similar conclusion.[5]

Q. WHAT IS THE BREAKDOWN OF APPLICANTS' UPDATED ESTIMATE OF NEARLY $1 BILLION IN SAVINGS?

A. Table 3 at page 74 of Mr. Reed's testimony summarizes his claimed "Total Revenue Requirements Savings" which represent less than half, or about $464.4 million, of the claimed nearly $1 billion in overall merger benefits. The following table sets out the component parts of the $960 million in updated merger benefits claimed in Applicants' responsive testimony, based upon the Supplemental response to CA-IR-303, Attachment 2, dated 8/25/15:

	Updated Savings $ Millions
Fixed RAM O&M Downward Adjustments	$ 60.00
Moratorium - Estimated Rate Increases Foregone	$ 132.76
Lower cost of debt associated with capital additions	$ 2.64
Non-Fuel O&M Savings After Moratorium (net of Costs	$ 30.00
Fuels Savings (passed through ECAC)	$ 67.50
10% Capital Spend Savings ROR/Depr (passed throug	$ 169.10
ERP/EAM Project Capital Savings ROR/Depr	$ 2.43
Total - Estimated Benefits to Ratepayers	**$ 464.42**
Other Economic benefits (increased economic activity)	$ 496.13
Applicants' Total Updated Merger Benefit Estimate	**$ 960.55** [6]

[5] CA Exhibit-33.

[6] Total may not foot due to rounding differences.

I will discuss the largest elements of claimed financial benefits to ratepayers totaling $464.4 million in the testimony that follows, leaving the "Other Economic Benefits" component of claimed benefits to be addressed by Consumer Advocate witness Mr. Comings.

Q. IN YOUR DIRECT TESTIMONY, YOU EXPRESSED CONCERNS THAT APPLICANTS' PROJECTED MERGER-ENABLED COST SAVINGS ARE "HIGHLY UNCERTAIN" AND RECOMMENDED THAT, "THE BEST WAY FOR THE COMMISSION TO FIRM UP THE INHERENTLY UNCERTAIN ESTIMATES OF COST SAVINGS IS TO CONDITION REGULATORY APPROVAL OF THE TRANSACTION UPON THE IMPLEMENTATION OF A 'RATE PLAN' THAT ENSURES THAT SIGNIFICANT POSITIVE BENEFITS WILL ACTUALLY FLOW TO RATEPAYERS."[7] HAVE THE MORE EXPANSIVE CLAIMS OF POTENTIAL MERGER SAVINGS WITHIN APPLICANTS' RESPONSIVE TESTIMONY CHANGED YOUR VIEW OF THE NEED FOR AN ENFORCEABLE RATE PLAN AND RATE CASE MORATORIUM TO LOCK IN A MINIMUM LEVEL OF SAVINGS FOR RATEPAYERS?

A. No. I would note that Applicants in responsive testimony have proposed no substantive improvement to the rate case moratorium or the $60 million in revenue requirement credits they initially offered, but are now claiming additional

[7] CA Exhibit-11, page 30.

projected merger-enabled cost savings that could flow through existing ratemaking mechanisms if actually realized in future years. Rate plan issues will be addressed in a subsequent section of my testimony.

Q. TURNING TO THE FIRST CLAIMED BENEFIT FOR RATEPAYERS, HAVE APPLICANTS, IN RESPONSIVE TESTIMONY, MODIFIED THE PROPOSED RAM O&M CREDITS TOTALING $60 MILLION?

A. No change in the amount of the RAM credits is proposed, but a fixed-dollar approach to the $60 million in rate credits is now formally proposed so that the RAM Cap imposed by the Commission in Order No. 32735 in Docket No. 2013-0141 does not dilute the O&M RAM forbearance that was initially proposed by Applicants. The need for this revision to the form of the rate credits was discussed in my prior Direct Testimony.[8]

Q. DOES THE CHANGED IMPLEMENTATION PLAN FOR THE $60 MILLION IN RAM CREDITS CAUSE IT TO NOW REPRESENT A REASONABLE RATE PLAN?

A. No. Aside from the relatively modest size of the proposed RAM Credits, Applicants have not corrected the problem created by the scheduled abrupt

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[8] See Consumer Advocate Exhibit-11, pages 32-33, where I explained how the RAM Cap approved in Order No. 32735 would have impeded full crediting of Applicants' original proposal to, "…forego recovery of the incremental base expenses through the O&M RAM mechanism for at least 4 years" and Applicants' responses to CA-IR-96 and CA-IR-350.

termination of the credits after year four, which causes an inexplicable $24 million net revenue increase in year five, even though any achieved merger savings are expected to continue after year four. Additionally, the ability for ratepayers to fully realize rate stability during the four year period of gradually increasing rate credits, that may eventually accumulate to $60 million, is tied to Applicants' rate case moratorium proposal. Unfortunately, the absence of capital cost updating and the multiple restrictive qualifications that are attached to the Applicants' proposed base rate case moratorium cause it to be unacceptable as a merger rate plan and potentially harmful to ratepayers.[9]

Q. HOW DOES MR. REED EXPLAIN THE SECOND ELEMENT OF CLAIMED MERGER SAVINGS THAT WILL BENEFIT RATEPAYERS?

A. According to Mr. Reed, "…savings ranging from $1.7 million in 2016 to $47.8 million in 2019 (totaling savings of $132.8 million) will be realized from the four-year base rate case moratorium. These figures are based on assumed Hawaiian Electric 2017 test year, Maui Electric 2018 test year, and Hawai'i Electric Light 2016 and 2019 test year rate cases that would have been filed under the normal triennial cycle. The projected level of savings assumes that real O&M cost increases (in excess of inflationary increases captured by the

[9] CA Exhibit-11, pages 42-45.

O&M portion of the RAM cap) included in these rate cases would have equalled those approved in the span of the last two completed rate cases for each utility."[10]

Q. IN YOUR DIRECT TESTIMONY, YOU WERE HIGHLY CRITICAL OF MR. REED'S CLAIMED $132 MILLION IN RATEPAYER BENEFITS FROM FOREGONE FUTURE RATE CASES DURING THE MORATORIUM PERIOD.[11] HAS MR. REED PROVIDED ANY SUBSTANTIVE REBUTTAL TO YOUR DIRECT TESTIMONY REGARDING THIS CLAIM?

A. No. Mr. Reed simply claims, "Witness Brosch's accusations are without any merit" and he states that, "[a] significant amount of additional work has now been started or completed, including a much more detailed analysis of the benefits associated with the base rate moratorium, which is what witness Brosch is referring to."[12] However, a review of Applicants Exhibit-85, at page 2, reveals that no additional work has been done to support the $132 million of claimed benefits from foregone future rate cases. This amount, as noted in my direct testimony,[13] is based upon the same faulty methodology and multiple flawed assumptions, including:

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10 Applicants Exhibit-50, page 68.

11 CA Exhibit-11, Pages 49-51.

12 Applicants Exhibit-50, page 85.

13 CA Exhibit-11, pages 49-51.

- That only Mr. Reed's estimates of O&M cost increases would be considered, while changes in the utilities' tax expenses, miscellaneous revenues and other base rate costs would be either insignificant or would be ignored.
- That projected higher non-fuel O&M expenses would drive the revenue requirement in future rate cases in the same amounts that such expenses happened to grow in past rate cases, starting as far back as 2006.
- That future rate cases would not account for reduced costs of long-term debt from refinancing activities that has occurred since the most recent base rate case test years.
- That future rate cases would not reduce the PUC-authorized return on equity or equity ratio to recognize generally lower capital costs since the most recent base rate case test years.

All of these assumptions underlying Mr. Reed's "analysis" are wrong and his resulting estimate of outcomes from future rate cases is hopelessly overstated.

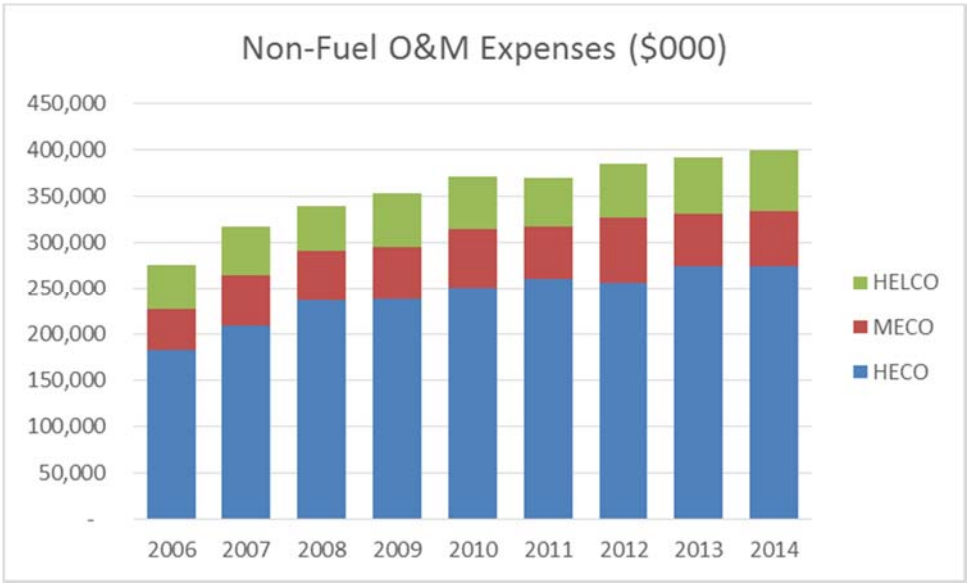
Q. HAS MR. REED PROVIDED ANY SUPPORT FOR HIS ASSUMPTION IN TESTIMONY AND IN APPLICANTS EXHIBIT-85 THAT NON-FUEL O&M EXPENSE INCREASES DATING BACK TO 2006, FROM PAST HECO, MECO AND HELCO RATE CASES, SERVE TO ACCURATELY PREDICT FUTURE RATE CASE OUTCOMES?

A. No. For example, Mr. Reed's estimate of future rate case outcomes in Applicants Exhibit-85 is based solely upon an expectation that Hawaiian Electric Company's future non-fuel O&M expense growth would exceed general inflation levels by $35.4 million within an assumed 2017 test year rate case, simply because allowed non-fuel O&M grew by this amount between HECO's previous 2009 and 2011 test years.[14] The same form of extrapolation of historical O&M growth is employed to estimate possible future base rate increases for MECO and HELCO, based upon past rate case test year expense growth from 2010 to 2012 (for MECO) and from 2006 to 2010 (for HELCO). Mr. Reed's approach is arbitrary and superficial because historical rates of growth in O&M between past rate case test years will not reliably predict future O&M growth above general inflation levels for the HECO Companies and because this approach fails to consider all of the other determinants of utility revenue requirements within base rate cases.

[14] Applicants Exhibit-85, page 2.

Q. HAVE THE REPORTED ACTUAL NON-FUEL O&M EXPENSES AT THE THREE UTILITIES BEEN GROWING AT RATES THAT EXCEED GENERAL RATES OF INFLATION?

A. No. The growth trend in more recent non-fuel O&M expense growth for the utilities has flattened. Since 2012, the last year of prior rate case test years relied upon by Mr. Reed to project O&M expense trends, the actual levels of non-fuel O&M expenses incurred by the utilities has grown at a rate close to general levels of inflation.[15] However, in years prior to 2011, when frequent base rate cases were being submitted, non-fuel O&M expenses were growing more rapidly, as shown by the following graph of recorded historical non-fuel O&M expenses derived from Applicants' response to CA-IR-354:



[15] The combined non-fuel O&M expenses for the three utilities in 2013 totaled $391.3 million, which was 1.6% higher than the comparable 2012 expenses of $385.1 million. In 2014, total non-fuel O&M had grown to $398.6 million, which is 1.9% higher than recorded 2013 expenses.

Mr. Reed's extrapolation of historical non-fuel O&M growth rates, occurring from 2006 to 2012, as a basis for estimating future trends in expense that could theoretically cause $132 million in future base rate increases is clearly unreasonable. Recent growth trends in actual O&M expense for the three utilities have moderated significantly and future O&M growth may be fully recovered through the inflation escalation provisions of the RAM, with no need for any additional base rate increases during the proposed moratorium period.

Q. ARE FORECASTED O&M EXPENSES WITHIN THE UTILITIES' LONG TERM FINANCIAL FORECASTS EXPECTED TO GROW AT THE RATE ASSUMED BY MR. REED?

A. No. The confidential and restricted forecast of "O&M Expense" for 2015, 2016, and 2017 contained within Hawaiian Electric Companies' responses to CA-IR-211, Attachment 2 and CA-IR-490, Attachment 1 suggest [redacted] in the absence of the proposed merger.

Q. SHOULD THE COMMISSION ASSIGN ANY VALUE TO THE $132 MILLION OF CLAIMED RATEPAYER SAVINGS ARISING FROM FOREGONE BASE RATE CASES DURING APPLICANTS' PROPOSED MORATORIUM PERIOD?

A. No. There is no way to reliably predict future rate case outcomes in the absence of the proposed merger, as attempted by Mr. Reed. As noted in my Direct

Testimony, the absence of any recent base rate increase requests from the utilities, the utilities reported excess earnings for RAM sharing purposes and the known overstatement of capital costs within presently effective base rates all suggest that existing rates are presently excessive. Thus, I expect that Applicants' proposed base rate case moratorium would actually create negative value for ratepayers by delaying the needed accounting for the utilities' currently lower costs of capital at the same time non-fuel O&M expense growth is minimal or non-existent.[16] The obvious need for an updating of the cost of debt and equity capital within presently effective base rate levels is a key element of the Consumer Advocate's proposed rate plan that should be undertaken before any base rate case moratorium is initiated.

Q. ACCORDING TO MR. REED, "IN TOTAL, THE REDUCTION OF THE RAM BY $60 MILLION IN TOTAL OVER THE FOUR-YEAR BASE RATE MORATORIUM, OR $131.25 ON A PER-CUSTOMER BASIS, AND GENERAL BASE RATE INCREASES WILL CREATE SAVINGS IN EXCESS OF $420/CUSTOMER."[17] IS THIS TRUE?

A. No. Some of the offered reduction in the RAM of $60 million would be immediately clawed back for the benefit of shareholders through the accelerated

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16 CA Exhibit-11, pages 50-51.

17 Applicants Exhibit-50, page 257.

accrual of annual RAM increases that would increase the revenues of the Hawaiian Electric Companies by at least $6 million per year.[18] Additionally, Applicants have attached additional restrictive qualifications to the base rate case moratorium that further dilute its value to ratepayers and/or may cause the moratorium to become unenforceable.[19] For instance, Applicants have stated they, "cannot confirm or deny" whether their proposed rate case moratorium would be withdrawn if the Commission agrees with the Consumer Advocate and does not approve the utilities' proposed "above the RAM Cap" recovery of program and project costs.[20]

As noted above and in my Direct Testimony, a negative value should be attached to any base rate case moratorium that is unenforceable, is packaged with unreasonable financial offsets and qualifications and that does not include an updating of capital cost inputs with permanent, up-front rate reductions to recognize the Hawaiian Electric Companies' historical success in refinancing long-term debt and the need to reset ROE and equity ratios underlying presently effective base rates, as more fully explained by Consumer Advocate witness Hill.

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18 CA Exhibit-11, pages 61-62 and footnote 63.

19 Applicants Exhibit-46 listed "subject to" and "conditioned upon" terms, as well as footnotes 1 through 3.

20 Applicants' responses to CA-IR-391 and CA-IR-392.

Q. HAS MR. REED ASSUMED ANY FURTHER REVENUE REDUCTIONS WILL RESULT FROM MERGER-ENABLED NON-FUEL O&M EXPENSE REDUCTIONS IN YEAR FIVE AND PRODUCE MERGER BENEFITS FOR CUSTOMERS AFTER THE PROPOSED RATE CASE MORATORIUM HAS EXPIRED?

A. Yes. Another $40 million of "Non-fuel O&M Savings" is assumed by Mr. Reed to somehow flow to customers in the year 2020, reduced by $10 million of "Costs to Achieve" such savings, producing "Net Benefits to Customers" of $30 million within Mr. Reed's total claimed savings."[21] He refers to this amount as, "post-rate moratorium O&M cost reductions" in his testimony.[22]

Q. COULD RATEPAYERS ACTUALLY RECEIVE ANOTHER $30 MILLION IN O&M EXPENSE SAVINGS IN YEAR FIVE, IMMEDIATELY AFTER THE FOUR-YEAR MORATORIUM TERMINATES?

A. No. This claimed benefit for customers is illusory. The only way ratepayers could fully participate in such savings is if all three utilities initiated rate case proceedings using a 2020 test year, resulting in new base rates effective early in

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21 Applicants Exhibit-50, page 74.

22 Id. page 16, line 11.

2020 that fully reflected such savings.[23] Mr. Reed's testimony does not explain the timing of specific rate case filings that could make this happen and when asked, within CA-IR-413, to explain with specificity the future rate case timing, Applicants stated, "Mr. Reed's analysis makes no such explicit assumptions. The actual schedule of rate cases for each of the Hawaiian Electric Companies will either be established by the Commission, or will be addressed by company management after the end of the base rate moratorium." This uncertainty means that, even if the merger actually creates net O&M savings of $30 million on the utilities' books in 2020, this element of claimed revenue requirement savings will likely not be captured for ratepayers, either because of the absence of 2020 test year rate cases or because of movement toward alternative regulatory models in keeping with Mr. Gleason's statement that, "NextEra Energy supports development of an incentive-based ratemaking construct that could apply at the end of this general base rate moratorium period."[24]

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[23] In theory, a portion of non-fuel O&M savings could contribute to excessive earned returns for one or more of the utilities that would be subject to sharing through the RAM mechanism, but this possible outcome would only partially pass the O&M reductions to ratepayers.

[24] Applicants Exhibit-7, page 59, line 3.

Q. MR. REED HAS INCLUDED WITHIN HIS CLAIMED MERGER SAVINGS IN HIS RESPONSIVE TESTIMONY ANOTHER $67.5 MILLION IN AVOIDED FUEL COSTS THAT HE CLAIMS WILL BE PASSED TO RATEPAYERS THROUGH THE ENERGY COST ADJUSTMENT CLAUSE ("ECAC") MECHANISM. HAS MR. REED PRODUCED ANY DETAILED CALCULATIONS IN TESTIMONY SUPPORTING THESE CLAIMED FUEL COST SAVINGS?

A. No. The explanation offered by Mr. Reed in testimony is, "NextEra Energy has assisted the Hawaiian Electric Companies in work on transitional fuel oil blends designed to allow the Companies to more efficiently operate and procure fuel oil while transitioning to natural gas. The work performed by NextEra Energy has helped identify an optimal fuel oil blend, which is expected to result in $10 to $20 million in savings relative to the fuel oil blend that was proposed by the Hawaiian Electric Companies in their PSIPs."[25] A mid-point of his broad range of estimated savings of $15 million per year is included by Mr. Reed for each year 2017 through 2020, with half of this value in year 2016 used to produce his cumulative total savings estimate of $67.5 million. However, it is unclear whether NextEra's work that "helped" to improve upon PSIP-proposed fuel oil blends was necessary or if such savings could have either been achieved by the

[25] Applicants Exhibit-50, page 64.

HECO Companies on their own or by employing third party consulting expertise (and without merging with NextEra).[26]

Q. THE SINGLE LARGEST ELEMENT OF ESTIMATED MERGER BENEFITS TO RATEPAYERS IS MR. REED'S CLAIMED $169.1 MILLION IN REDUCED FUTURE REVENUE REQUIREMENTS PRODUCED BY REDUCING THE HECO COMPANIES' FUTURE CAPITAL EXPENDITURES BY 10 PERCENT. HOW WAS THIS VALUE DETERMINED?

A. The 10 percent assumed savings in future capital spending is explained in Mr. Reed's responsive testimony to incorporate the same broad assumptions that were used in his Direct Testimony:

> As discussed in my Direct Testimony, NextEra Energy expects to achieve an average savings of 10% on the Hawaiian Electric Companies' capital expenditures. For example, if the Hawaiian Electric Companies fund 100% of the PSIPs, investing $8 billion, approximately $800 million of savings are expected to be achieved. The average 10% savings on the capital programs is comprised of 3% design optimization, 3% improved supply chain pricing, 2% incorporating best practices, and 2% improved construction management.[27]

No more detailed analysis of the component assumptions underlying the 10 percent average savings rate applicable to future capital programs is

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[26] Calculation support for the fuel savings amounts was provided in Applicants' Confidential Attachment 1 to CA-IR-414.

[27] Applicants Exhibit-50, page 69.

produced in Mr. Reed's responsive testimony. In response to CA-IR-412, Applicants stated, "The 10 percent savings in capital expenditures was not the product of analyses or workpapers. It was the product of a more generalized comparison of the capabilities of the Hawaiian Electric Companies and NextEra Energy in the areas of supply chain, construction management and engineering as discussed in the original and supplemental responses to CA-IR-303."

Q. WHAT ANNUAL LEVELS OF CAPITAL SPENDING WERE ASSUMED BY MR. REED IN TRANSLATING THE 10 PERCENT ASSUMED REDUCTION IN CAPITAL PROGRAM SPENDING INTO HIS ASSERTED REVENUE REQUIREMENT SAVINGS?

A. Annual capital spending of $800 million per year was assumed by Mr. Reed across all three utilities in 2016 and again in 2017, with capital spending at $730 million in 2018 and then $620 million in both 2019 and 2020. In addition, another $20 million in merger-enabled savings is assumed with respect to the utilities' ERP/EAM project in 2016.[28]

[28] Applicants' responses to CA-IR-412(a) and CA-IR-303, Supplement August 25, 2015, Attachment 2.

Q. DO THE HECO COMPANIES EXPECT TO ACTUALLY INCUR $800 MILLION IN CAPITAL EXPENDITURES IN 2016 AND AGAIN IN 2017?

A. No. According to the Capital Expenditures slide made available to investors on the HEI web site, forecasted net capital spending as of August 10, 2015 includes planned expenditures of $700 million and $720 million for the years 2016 and 2017, respectively. However, these amounts include $250 million in 2016 and another $360 million in 2017 of "Transformational" investments in battery storage, Schofield generation,[29] liquefied natural gas and smart grid investments, that are pending application to and/or approval by the Commission and another $90 million of Enterprise Resource Planning costs not yet approved by the Commission.[30] Notably, the utilities' planned capital spending levels were pared back significantly earlier this year. In a May 6, 2015 Investor Relations News Release, HEI stated:

> We reaffirm our key assumptions for 2015 EPS guidance disclosed on February 12, 2015, in our yearend [(sic)] earnings call except for the following. The utilities have re-evaluated the timing of their 2015-2017 net capital expenditures, revising their prior 3-year forecast from a range of $1.1 billion to $2.0 billion downward to a range of $0.8 billion to $1.7 billion. 2015 is the transitional year under the revised rate adjustment mechanism (RAM) and our utility will propose a new approval process for projects exceeding the new GDPPI cap under the revised mechanism. Given the change to the

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[29] On September 29, 2015, the Commission issued Decision and Order No. 33178 in Docket No. 2014-0113, conditionally approving construction of the Schofield generation station and related transmission facilities.

[30] Included in slide #19 as supporting materials for the "Q2 2015 Hawaiian Electric Industries, Inc. – earnings Conference Call: 8/10/15 available at: http://www.hei.com/phoenix.zhtml?c=101675&p=irol-news-and-events#heco-news

> RAM, the number of other high priority issues currently before the PUC and our continuing refinement of our transformation plans, we have reduced our forecast for 2015 net capital expenditures from $420 million to $250 million. As a result, the utility will not need the previously estimated $60 million HEI equity infusion and is re-evaluating the amount of debt needed in 2015. The 2015 rate base growth is now expected to be between 1.5% to 3.0%.[31]

Thus, even if Applicants eventually achieve capital spending cost savings at Mr. Reed's expected 10 percent level, this assumed percentage savings rate has been applied immediately and to an overstated near-term level of capital spending, resulting in claimed savings that are significantly overstated.

Q. MR. REED COMPARES THIS TRANSACTION TO OTHER "DEALS" IN HIS RESPONSIVE TESTIMONY AND STATES, "FURTHER, UNLIKE SOME OTHER MERGERS WHICH PROVIDED FOR A SHARING OF MERGER SAVINGS AFTER A RATE FREEZE, NEXTERA ENERGY HAS OFFERED TO REFLECT 100% OF ALL NET NON-FUEL O&M SAVINGS ACHIEVED BY EACH OF THE HAWAIIAN ELECTRIC COMPANIES IN THE FIRST TEST PERIOD FOLLOWING THE RATE CASE MORATORIUM…". IS THIS A BENEFIT OF APPLICANTS' PROPOSED RATE PLAN?

A. No. Any rate plan that purports to "share" merger savings is likely to be inherently complex and unreliable, unless the approved rate plan is based upon deemed values that require no measurement and verification in the post-merger

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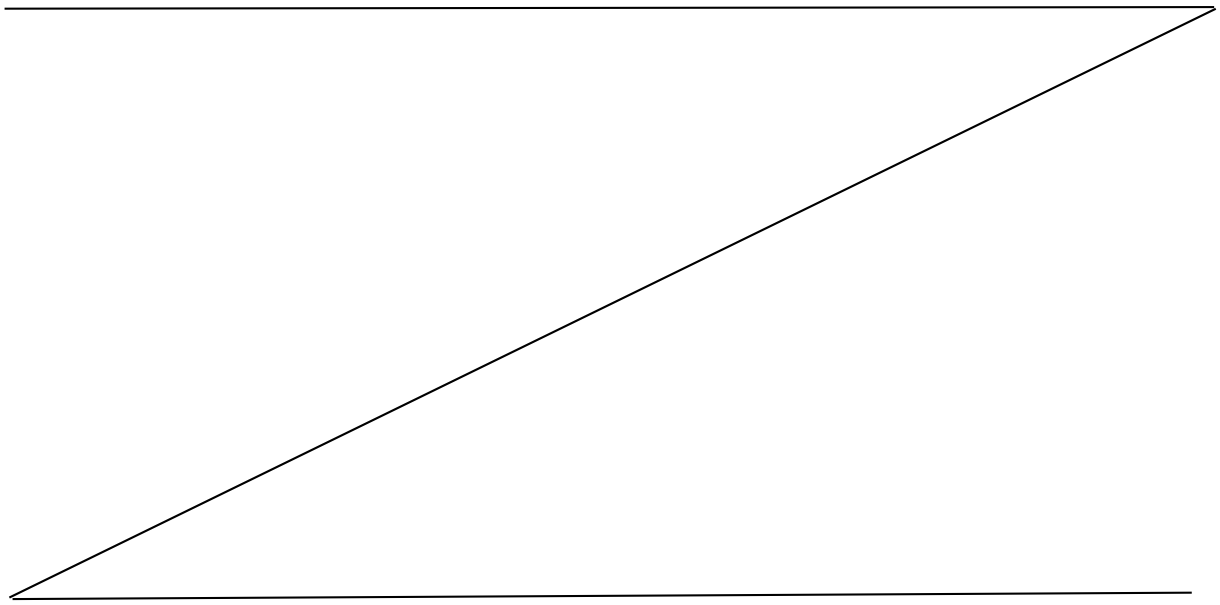
31 Available at: http://www.hei.com/phoenix.zhtml?c=101675&p=irol-newsArticle&ID=2045036

environment. It is nearly impossible to accurately isolate the incremental costs incurred solely because of the merger integration process and then also accurately quantify the resulting incremental cost savings that could not have been achieved "but for" the merger. Because merger integration costs and merger cost savings benefits cannot be readily, continuously and accurately quantified, any regulatory scheme to explicitly quantify and "share" such amounts is inherently unreliable. For Mr. Reed to argue that Applicants' regulatory proposals in Hawaii are reasonable because they could have been much worse through some merger savings "sharing" approach used in other states is disingenuous.

Q. WILL IT BE POSSIBLE IN THE FUTURE TO ACTUALLY MEASURE AND CONFIRM THE NET MERGER-ENABLED COST SAVINGS THAT ARE ACTUALLY ACHIEVED, IF THE PROPOSED MERGER IS APPROVED AND CONSUMMATED?

A. No. If this merger is approved by the Commission and after it is consummated, there will no longer be any reported costs or financial results for the "un-merged" Hawaiian Electric Companies that could serve as a baseline for comparison to reported post-merger costs and reported financial results. Then, as now, quantification of merger savings, costs to achieve savings, and the resulting net achieved merger benefits would necessarily be based upon assumptions and potentially controversial studies about how costs were "changed" through actions

taken to integrate the merged business operations as well as the necessary additional assumption that similar efficiencies could not have been attained by existing management and/or contracted service providers in the absence of the merger. This problem is laid bare where NextEra was asked about Mr. Gleason's statement in testimony that, "[t]he merger will result in lower power prices for utility customer than they would otherwise be paying"[32] and, in response to DBEDT-IR-208, NextEra stated, "NextEra Energy has prepared no such analysis to identify the power prices that utility customers would otherwise be paying." The bottom line is that merger savings forecasts prepared prior to closing and assertions regarding achieved actual net savings after a merger is consummated always involve judgment and estimation, rather than accounting precision.



[32] Applicants Exhibit-36, page 48.

Q. MR. REED ROLLS TOGETHER HIS SUMMARY OF "NEW RATE REDUCTION BENEFITS [THAT] ARE ESTIMATED TO BE $464.4 MILLION ACROSS THE FIRST FIVE YEARS OF THE POST-MERGER ENVIRONMENT" AND PROVIDES A TABLE SHOWING A RANGE OF AMOUNTS "PER CUSTOMER."[33] ARE MR. REED'S PER CUSTOMER AMOUNTS ALSO OVERSTATED?

A. Yes. Because of his systematic overstatement of expected cost savings I have discussed, Mr. Reed's resulting per-residential customer rate reduction amounts at page 17 of his responsive testimony are similarly overstated. Another problem with Mr. Reed's calculations is his use of revenue dollars to allocate RAM rate adjustments to the Residential customer class. RAM and RBA rate changes are actually determined on a per kWh basis, so a kWh-based allocation is needed to properly attribute RAM revenue changes to the Residential customer class. Additionally, Mr. Reed admits that only his $60 million of proposed fixed reductions to future RAM increases are "guaranteed within the first four years"[34] and this amount represents less than 13 percent of Mr. Reed's more expansive claimed rate reduction benefits of $464.4 million.

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[33] Applicants Exhibit-50, pages 16 and 17.

[34] Id. page 16, line 7.

Q. MR. REED PRESENTS, IN TABLE 4 WITHIN HIS RESPONSIVE TESTIMONY, A SUMMARY OF RESIDENTIAL CUSTOMER SAVINGS BY YEAR AND IN TOTAL FOR EACH UTILITY/ISLAND BEING SERVED.[35] DO THESE VALUES ACCURATELY REFLECT RATE REDUCTION SAVINGS THAT CUSTOMERS WILL EXPERIENCE?

A. No. These amounts are developed from the same overstated rate reduction estimates that are discussed in the preceding testimony. The only guaranteed rate reduction impacts proposed by the Applicants generate much lower annual and total per-customer savings, as shown in the table below.

Q. HOW DOES APPLICANTS' PROPOSED $60 MILLION IN CUMULATIVE RATE REDUCTIONS ACROSS ALL FIVE YEARS COMPARE TO THE $62 MILLION IN ANNUAL RATE REDUCTIONS PROPOSED IN THE CONSUMER ADVOCATE'S RATE PLAN?

A. The Applicants' guaranteed rate reductions yield the following array of annual and cumulative per-residential customer benefits, if computed on a per-kWh basis in compliance with the way RAM rate changes are implemented:

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[35] Id. page 76.

RAM Rate Reductions Proposed by Applicant:	2016	2017	2018	2019	2020	Cumulative
Guaranteed RAM Rate Reductions - $ Millions	$ 6.00	$ 12.00	$ 18.00	$ 24.00	$ -	
Annual GWH Sales - Combined Utilities	8953	8953	8953	8953	8953	
Per kWh reduction in RAM/RBA rate	$ 0.00067	$0.00134	$0.00201	$0.00268	$ -	
Annual savings per residential customer - Maui Division	$ 4.40	$ 8.80	$ 13.20	$ 17.60	$ -	$ 43.99
Annual savings per residential customer - Lanai Division	$ 3.58	$ 7.16	$ 10.74	$ 14.31	$ -	$ 35.79
Annual savings per residential customer - Molokai Division	$ 2.51	$ 5.02	$ 7.53	$ 10.04	$ -	$ 25.09
Annual savings per residential HELCO customer	$ 3.70	$ 7.40	$ 11.10	$ 14.80	$ -	$ 36.99
Annual savings per residential HECO customer	$ 4.05	$ 8.09	$ 12.14	$ 16.18	$ -	$ 40.45

In contrast, the rate reduction proposed by the Consumer Advocate is immediately and continuously beneficial to ratepayers, without the arbitrary termination of benefits after year four that occurs under Applicants' proposal.

Rate Reduction Proposed by Consumer Advocate:	2016	2017	2018	2019	2020	Cumulative
Consumer Advocate Rate Reduction - $ Millions	$ 62.54	$ 62.54	$ 62.54	$ 62.54	$ 62.54	
Annual GWH Sales - Combined Utilities	8953	8953	8953	8953	8953	
Per kWh reduction in RAM/RBA rate	$ 0.00699	$0.00699	$0.00699	$0.00699	$0.00699	
Annual savings per residential customer - Maui Division	$ 45.85	$ 45.85	$ 45.85	$ 45.85	$ 45.85	$ 229.27
Annual savings per residential customer - Lanai Division	$ 37.30	$ 37.30	$ 37.30	$ 37.30	$ 37.30	$ 186.52
Annual savings per residential customer - Molokai Division	$ 26.15	$ 26.15	$ 26.15	$ 26.15	$ 26.15	$ 130.77
Annual savings per residential HELCO customer	$ 38.56	$ 38.56	$ 38.56	$ 38.56	$ 38.56	$ 192.81
Annual savings per residential HECO customer	$ 42.17	$ 42.17	$ 42.17	$ 42.17	$ 42.17	$ 210.83

I will discuss specific issues raised in Applicants' responsive testimonies regarding rate plan and rate adjustment issues in the next section of my testimony.

III. RATE PLAN ISSUES.

Q. IS THERE CONCEPTUAL AGREEMENT BETWEEN APPLICANTS AND THE CONSUMER ADVOCATE THAT DOWNWARD RATE ADJUSTMENTS AND THEN RATE STABILITY ARE NEEDED IN ORDER TO YIELD PUBLIC INTEREST BENEFITS IN CONNECTION WITH THE PROPOSED MERGER?

A. Yes. Applicants continue to assert that they expect ever larger levels of cost savings benefits to result from the proposed transaction and that a significant

portion of such savings should flow to ratepayers through RAM credits, the ECAC and other ratemaking mechanisms. Applicants have also acknowledged that a base rate case moratorium is appropriate to provide pricing stability while business integration risks and costs are incurred and to avoid the distraction and expense of formal rate cases. The Consumer Advocate views Applicants' cost savings claims as speculative and highly uncertain, and is willing to support regulatory approval of the merger only if ratepayers are assured participation in significant and tangible net merger benefits through locked in rate reductions, along with protection from merger risks and costs during an enforceable moratorium and other conditions to mitigate identified concerns arising from the proposed transaction.

A. Rate Case Moratorium.

Q. HAVE APPLICANTS CHANGED ANY TERMS ASSOCIATED WITH THE LIMITED TERM MORATORIUM ON FUTURE RATE CASES THAT IS PROPOSED IF THE PROPOSED TRANSACTION IS APPROVED AND CONSUMMATED?

A. Yes. A four-year rate base rate case moratorium is still proposed, but is now made subject to additional conditions in Applicants' responsive testimony, as described in the long narrative footnotes within the "Updated Base Rate Moratorium Qualifications" document identified as Applicants Exhibit-46 sponsored by Mr. Gleason.

Q. DO APPLICANTS AGREE THAT AN ENFORCEABLE BASE RATE CASE MORATORIUM IS NEEDED IN ORDER TO PROTECT RATEPAYERS FROM THE RISKS AND COSTS OF BUSINESS INTEGRATION EFFORTS AFTER THE MERGER IS APPROVED?

A. Yes. A rate case moratorium provision is being proposed by Applicants to define and limit ratepayer participation in merger benefits and to encourage cost-effective post-merger integration planning and implementation, by freezing base rates and allowing the utilities to retain any achieved net merger savings that do not flow through the RAM, ECAC or other rate adjustment mechanisms. This is acknowledged by Mr. Reed where he notes in his responsive testimony that:

> The non-fuel O&M cost savings associated with insurance, professional services, and IT expenses are assumed to be not passed on separately during the four-year base rate moratorium period. For this four-year period, the O&M cost savings produced for customers are assumed to be derived exclusively from the rate moratorium, and the fixed-dollar credits to the RAM filings. The non-fuel O&M savings will, however, be reflected in a lower cost of service after the rate moratorium. The bulk of the costs to achieve non-fuel O&M savings will be incurred during the rate freeze period, and as such, will not be collected from the Hawaiian Electric Companies' customers.[36]

As noted in my direct testimony, if the proposed rate case moratorium is violated for any reason, it is quite possible for test year merger integration costs to exceed

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[36] Applicants Exhibit-50, page 72.

merger-enabled savings.[37] Violation of the rate case moratorium would also expose ratepayers to forecasting subjectivity and potential controversy surrounding the development of reliable test year forecasts of ongoing O&M expenses in the still developing post-merger environment.

Q. DO THE REVISIONS TO APPLICANTS' PROPOSED RATE CASE MORATORIUM WITHIN MR. GLEASON'S RESPONSIVE TESTIMONY MAKE THE OFFERED RATE CASE MORATORIUM ANY MORE ENFORCEABLE OR VALUABLE TO RATEPAYERS THAN WHAT WAS PROPOSED IN THE APPLICANTS' DIRECT TESTIMONY PROPOSAL?

A. No. Mr. Gleason's new conditions add additional uncertainty to Applicants' proposed rate case moratorium and may render it unenforceable, by requiring as conditions that the Commission continuously:

- Allow for adequate cost recovery above the RAM Cap for approved capital projects, even though the Consumer Advocate did not support the liberal Standards and Guidelines proposed by the Hawaiian Electric Companies for such recoveries.
- Make no modifications to the energy cost adjustment clause ("ECAC") mechanism that severely restrict the Hawaiian Electric Companies' ability

[37] CA Exhibit-11, page 70.

to timely recover fuel and purchased power costs, even though the ECAC remains the subject of Commission evaluation in Docket No. 2013-0141.

- Approve the Joint Proposed Modified REIP Framework/Standards and Guidelines filed in Docket No. 2013-0141 pursuant to Order No. 32735.

In contrast, the rate case moratorium proposed by the Consumer Advocate did not seek to tie the Commission's hands with respect to potential revisions to the RAM or other ratemaking mechanisms.[38]

Q. IN DIRECT TESTIMONY, YOU RECOMMENDED A PENALTY OF 100 BASIS POINTS (ONE PERCENT) BE SUBTRACTED FROM THE RATEMAKING RETURN ON EQUITY IF THE MERGER IS APPROVED SUBJECT TO A RATE CASE MORATORIUM AND THAT MORATORIUM IS NOT HONORED.[39] HOW DID APPLICANTS RESPOND TO THIS PROPOSAL?

A. Ms. Sekimura claims this proposal is unreasonable because it represents an "automatic trigger" that she believes would "undermine the Commission's rules and authority, and should be rejected." She also argues that, "…if an unforeseen situation arises where it would be reasonable and in the public interest for the Companies to incur a level of expenditures that necessitates a rate case, the Consumer Advocate's proposed penalty could impair the Companies' ability to

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38 Id. page 63.

39 CA Exhibit-11, page 61.

finance needed utility investments, to the detriment of the customers who rely on the Companies for electric service." Ms. Sekimura prefers the Applicants' approach under which, "[a]ny company filing an application for a general rate increase earlier than allowed under the moratorium would have to show at the outset that it is suffering financial distress due to the occurrence of an extraordinary expense, or that there has been an occurrence creating a compelling financial need…"[40] and she continues with an extensive discussion of the continuing controversy surrounding the HECO Companies Above the RAM Cap recommendations, arguing that, "This opportunity to recover above the RAM Cap could reduce the risk that a compelling financial need justifying a rate case during the moratorium would ever arise. Yet, the Consumer Advocate opposes this opportunity while at the same time proposing to penalize the Companies if compelling financial need justifies the filing of a rate case." [41]

Q. HOW DO YOU RESPOND TO THESE ARGUMENTS?

A. The Consumer Advocate's moratorium violation penalty proposal was not intended to undermine the Commission's authority. In fact, the proposed ROE penalty is subject to approval by the Commission in this docket and would remain subject to the Commission review and "authority" in any rate case proceeding

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40 Applicants Exhibit-79, page 53.

41 Applicants Exhibit-79, pages 54-56.

that violated the intended moratorium. The purpose of the proposed penalty is to formally provide for a sharing of the pain caused by any premature rate case filing, by precluding an assertion by the utility of an entitlement to a fully compensatory return on equity at the same time the utility alleged compelling financial need for early rate relief. I am confident that the Commission could consider all relevant facts and concerns at the time any moratorium-violating rate case was submitted, including merger condition provisions for a reduced equity return allowance, as well as the degree of financial distress that is demonstrated by the utility.

B. A Rate Reduction Is Needed.

Q. HAVE APPLICANTS PROPOSED A RATE ADJUSTMENT TO PROVIDE GUARANTEED RATE REDUCTION BENEFITS TO CUSTOMERS IF THE MERGER, THE RATE CASE MORATORIUM AND OTHER ELEMENTS OF APPLICANTS' REGULATORY PLAN ARE APPROVED?

A. Yes. According to Mr. Gleason, Applicants propose to, "…guarantee a reduction to the otherwise applicable RAM revenue adjustment equaling $60 million across four years if the other elements of the Applicants' regulatory plan are approved as submitted."[42] The Applicants' proposed RAM rate reductions are temporary,

[42] Applicants Exhibit-36, page 62. See also Applicants response to CA-IR-350.

would expire after four years of post-merger operations, and would require Commission acceptance of the rate case moratorium and related "qualifications" set forth in Applicants Exhibit-46.

Q. HAVE APPLICANTS PROVIDED ANY EVIDENCE IN THEIR RESPOSIVE TESTIMONIES TO SHOW THAT PRESENTLY EFFECTIVE BASE RATE LEVELS ARE REASONABLE AND NOT EXCESSIVE AND WOULD, THEREFORE, BE JUST AND REASONABLE IF FROZEN THROUGHOUT APPLICANTS' PROPOSED MORATORIUM PERIOD?

A. No. Instead of providing any showing of the reasonableness of present rates before freezing them, Mr. Reed urges no critical review of present rates levels and instead argues:

> It would be completely inappropriate to try to convert this proceeding into a limited-scope rate case. First, there has been no evidence provided on the Hawaiian Electric Companies' costs from which the Commission could make a sustainable determination of just and reasonable rates. Further, not all of the right parties are involved in the proceeding. The case was not noticed as a rate case, and if it were converted into a rate case, there could be dozens of other issues that parties would want to have adjudicated, from tariff language to prudence challenges. It is inconsistent with fundamental due process principles for the Consumer Advocate to introduce these out of scope issues, which places the Commission in a position of possibly ruling on them without providing the necessary notice and hearing opportunities to satisfy due process.[43]

[43] Applicants Exhibit-50, page 97.

Applicants' responsive testimony witnesses then reject the Consumer Advocate's proposal to update the cost of long term debt, return on equity and equity ratio, while seeking to implement only Mr. Reed's fixed and limited reduction to rates worth only $6 million in the first year at the inception of the proposed rate case moratorium.[44]

As I noted in my Direct Testimony, the actual value of any rate case moratorium is a function of the reasonableness of the present rates at the inception of any moratorium, as well as all of the other terms and conditions effective during the moratorium that impact rates actually charged to customers.[45]

Q. BY PROPOSING $60 MILLION IN RAM RATE REDUCTIONS, HAVE THE APPLICANTS ENGAGED IN A "LIMITED SCOPE RATE CASE" THAT SEEKS TO ADJUST CHARGES TO CUSTOMERS WITHOUT THE FORMAL NOTICE AND OTHER DUE PROCESS CONSIDERATIONS REFERENCED BY MR. REED?

A. Yes. I am not an attorney and can provide no legal opinion regarding rate change notice and due process requirements. However, it is obvious to me that most of

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[44] See Applicants Exhibit-50, pages 97-104; and Mr. Reed's Exhibits 51 and 52; and Applicants Exhibit-79, pages 39-52. The first year of Applicants proposed rate reduction involves a reduction of only $6 million in annual revenues, growing gradually to $24 million in year four and then expiring completely in year five, as shown in Applicants Exhibit-50, at page 74.

[45] CA Exhibit-11, page 33.

the parties in this merger docket have been notified of the ratemaking issues raised in this proceeding by Applicants. The Consumer Advocate and other parties clearly have an opportunity to present their views on such topics. Indeed, Applicants have proposed downward adjustments to customer rates to provide certain estimated merger benefits to ratepayers and have also proposed a multi-year rate case moratorium that would defer formal rate cases for several more years.

Q. WOULD THE RAM RATE REDUCTIONS PROPOSED BY APPLICANTS BE IMPLEMENTED ON A PER KWH BASIS, MUCH LIKE THE PER KWH RATE REDUCTIONS BEING PROPOSED BY THE CONSUMER ADVOCATE?

A. Yes. All RAM rate changes are implemented on a per kWh basis, in accordance with the utilities' existing Revenue Balancing Account tariff.[46] While Mr. Reed is attempting to characterize the Consumer Advocate's per KWH rate reductions as a full blown rate case necessarily invoking "dozens of other issues" such as formal notice, intervention procedures, tariff language and prudence analyses, the truth is that both Applicants and the Consumer Advocate are proposing nothing more than across the board reductions in rates on a per-KWH basis in connection with a utility merger and a multi-year rate case moratorium.

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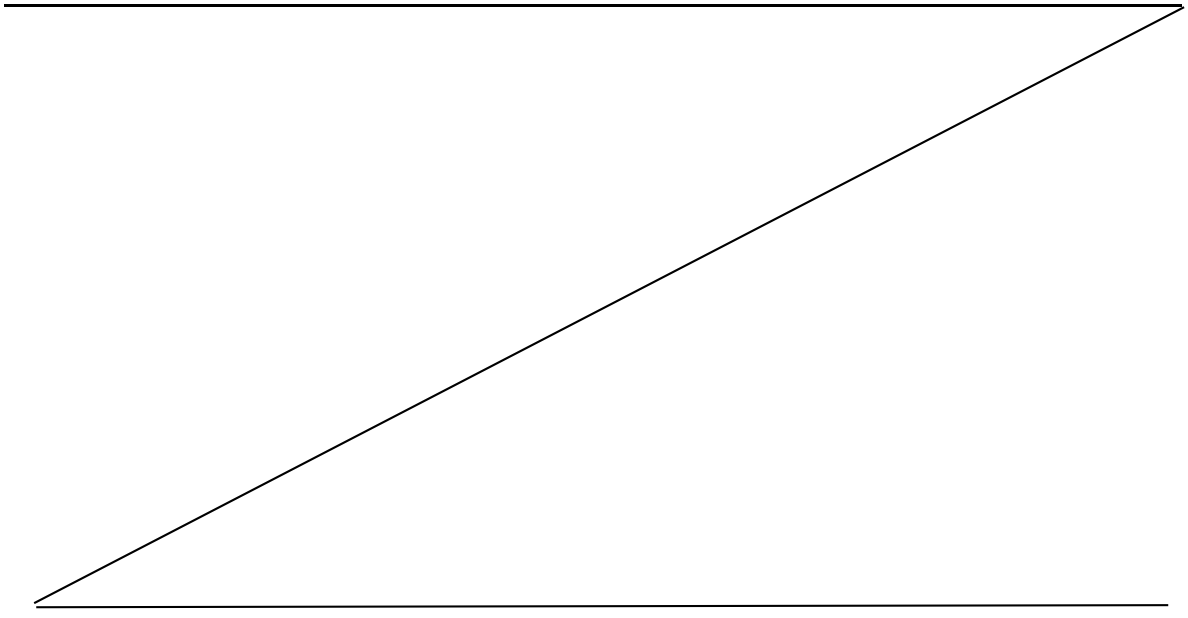
[46] Hawaiian Electric's Revenue Balancing Account ("RBA") Provision tariff is available at: http://www.hawaiianelectric.com/vcmcontent/StaticFiles/FileScan/PDF/EnergyServices/Tarrifs/HECO/HECORatesRBA.pdf and currently provides for an RBA Rate Adjustment applicable to all rates schedules of 2.1078 cents/kWh.

Q. IF THE COMMISSION AGREES WITH THE APPLICANTS THAT ONLY RAM RATES CAN BE CHANGED IN A MERGER CASE AND OUTSIDE OF A FORMAL RATE CASE, COULD THE CONSUMER ADVOCATE'S PROPOSED RATE REDUCTION BE EFFECTED THROUGH THE RAM?

A. Yes. If Applicants have correctly determined that adjustments to RAM rates can occur in this proceeding, without triggering the notice and other concerns raised by Mr. Reed, then the 0.7 cents per kWh across the board rate reduction proposed in the Consumer Advocate's rate plan does not necessarily need to be implemented as a base rate change. Instead, it could be implemented as a permanent fixed per-kWh reduction to RAM/RBA rates, assuming this approach is necessary to avoid the rate case notice and intervention complications of concern to Mr. Reed. The Consumer Advocate's rate plan could use the same RAM mechanism that Applicants choose to employ, but would make the rate reductions permanent until a next rate case occurs for each utility.



Q. ACCORDING TO MR. REED, "WITNESS BROSCH HAS UNILATERALLY CONCLUDED THAT THE HAWAIIAN ELECTRIC COMPANIES' CURRENT RATES ARE UNJUST AND UNREASONABLE. HIS POSITION IS COMPLETELY UNSUPPORTED BY ANY FACTS."[47] IS THIS TRUE?

A. No. There are ample facts, as set forth in detail within Mr. Hill's Direct Testimony and my own, to support the need for updating of the cost of capital inputs that are employed between triennial rate cases to set base rates and to calculate annual RAM rate adjustments. To clarify that testimony, it is known that the intended schedule for triennial updating of capital cost inputs would be extended beyond expectations if these key values for the cost of debt and equity capital are not updated until 2020, as proposed by Applicants, because of the proposed rate case moratorium. The RBA and RAM mechanism adjusts rates annually, pursuant to prescribed formula, for changes in sales volumes and changes in the major components of rate base, but holds constant the cost of debt, return on equity and capital ratio findings approved in each utility's last formal rate case.

Second, the proposed merger is expected to favorably impact the capitalization and the cost of capital of the Hawaiian Electric Companies, as more fully explained by Consumer Advocate witness Mr. Hill. It would be unreasonable to simply freeze current base rate levels that were based upon

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[47] Applicants Exhibit-50, page 97.

dated analyses and evidence of capital costs under HEI ownership from prior rate cases.[48]

Third, the Applicants appear to agree that current rates require downward adjustment if the merger is approved and consummated, as indicated by the $60 million in temporary RAM rate reductions that they propose. The Applicants' rate reduction amount may not be tied to specific cost changes or calculated from any estimated merger impacts, but it nonetheless represents an admission that current rates would be too high in a post-merger environment and should be reduced in connection with merger approval.

C. Rates of Return on Rate Base Should Be Updated.

Q. ACCORDING TO MR. REED, "THE COMMISSION'S DETERMINATION ON THE MERITS OF THE PROPOSED TRANSACTION DO NOT REQUIRE A DETERMINATION AS TO WHETHER OR NOT THE UTILITIES' CURRENTLY AUTHORIZED RETURN ON EQUITY AND EQUITY RATIO ARE CONSISTENT WITH CURRENT MARKET CONDITIONS, OR WHETHER THE UTILITIES' CURRENT RATES ARE JUST AND REASONABLE."[49] IS THIS TRUE?

A. No. Commission approval of the Applicants' proposed base rate case moratorium, that would set aside the Commission's previously ordered triennial

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48 CA Exhibit-28, pages 19-20.

49 Applicants Exhibit-50, page 104.

rate case filing obligation, creates a need to determine that the utilities' current rates are just and reasonable before they are frozen for at least four more years. The Consumer Advocate's testimony and analysis supports a conclusion that the utilities' current rates are not just and reasonable, because they are based upon old and overstated capital cost information that should be updated prior to initiating a base rate case moratorium. An updating of capital cost rates is also long overdue for use in calculating annual RAM increases that rely upon the Commission-approved rate of return in calculating the Rate Base RAM each year.

Q. HAS MR. REED PROPOSED THAT THE CAPITAL COST BENEFITS CLAIMED TO BE CREATED BY THE MERGER BE EXPLICITLY PASSED THROUGH TO RATEPAYERS?

A. No. Mr. Reed and the Applicants apparently intend to keep all near-term interest expense savings and any reductions in the cost of equity arising from the merger for the sole benefit of shareholders, except for the relatively minor and delayed impact of any incidental reduction in the utilities' Allowance for Funds Used During Construction ("AFUDC") rate. In his Responsive Testimony, Mr. Reed states, "Credit rating agencies have reacted favorably to the merger, and as a result, the merger is expected to enhance the Hawaiian Electric Companies' credit position, improve their access to capital and reduce their costs of borrowing." But then he notes that such savings will only flow to ratepayers via,

"[l]ower debt, AFUDC and project costs [that] will reduce the eventual base rate impact of capital expenditures." Finally, Mr. Reed confirms that, "…interest expense savings would be passed through to the customer on a dollar for dollar basis after the four-year base rate moratorium."[emphasis added][50] These statements reveal that Applicants intend to retain for the sole benefit of shareholders the interest cost savings from reduced borrowing costs for Plant in Service prospectively and that have been achieved in the recent past, since the last rate cases of each of the utilities, when the cost of long term debt was last updated.

Q. MR. REED REACTS TO THE CONSUMER ADVOCATE'S PROPOSED RATE PLAN BY STATING, "CLEARLY, THE RETURN ON RATE BASE IS NOT THE ONLY DETERMINANT OF JUST AND REASONABLE RATES…THIS IS A CLASSIC ATTEMPT AT SINGLE ISSUE RATEMAKING."[51] HOW DO YOU RESPOND?

A. I agree with Mr. Reed that the percentage return ("ROR") on rate base is not the only determinant of the utilities' revenue requirement. However, the ROR input is the only individually significant component of the Hawaiian Electric Companies' utility revenue requirements that is not subject to some automatic

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50 Applicants Exhibit-50, pages 69, 70 and 75.

51 Id. page 98.

and continuing rate adjustment mechanism that has been implemented by the Commission for the benefit of the utilities. The following utility cost tracking mechanisms serve to periodically revise utility rates to provide full or partial recovery of changes in all other major determinants of the utilities' revenue requirement:

Fuel Expense	>>	Energy Cost Adjustment Clause
Purchased Energy	>>	Energy Cost Adjustment Clause
Purchased Capacity	>>	Purchased Power Adjustment Clause
Labor O&M	>>	Rate Adjustment Mechanism
Non-labor O&M	>>	Rate Adjustment Mechanism
Pension/OPEB Benefits	>>	Deferral Accounting
Clean Energy Study Costs	>>	REIP Surcharge
Depreciation/Amortization	>>	Rate Adjustment Mechanism
Taxes Other than Income	>>	Rate Adjustment Mechanism
Plant in Service	>>	Rate Adjustment Mechanism & REIP
Accumulated Depreciation	>>	Rate Adjustment Mechanism
Deferred Income Taxes	>>	Rate Adjustment Mechanism
Contributions in Aid of Construction	>>	Rate Adjustment Mechanism
Changes in KWH Sales	>>	Revenue Balancing Account
Energy Efficiency & DSM	>>	DSM/IRP and PBF Surcharges

Unlike these multiple mechanisms that update and revise rates to account for changing utility sales and cost levels, the ROR percentage applicable to rate

base is adjusted only in the context of base rate cases. The ROR percentage is fixed between triennial planned rate cases because, when the RAM was established, it was understood to be administratively impractical to conduct studies of ROR within annual, expedited RAM review proceedings. Instead, the RAM that was approved by the Commission held constant the ROR to be used in calculating Rate Base RAM rate changes at the level established in the most recent formal rate case, with the requirement that this ROR would be updated within each triennial rate case. It was never contemplated that the cost of debt, return on equity and capital structure ratios would be fixed for more than three years at a time.

Q. WHAT TEST YEAR WAS USED TO DETERMINE THE PRESENTLY AUTHORIZED COST OF DEBT, RETURN ON EQUITY AND CAPITAL STRUCTURE RATIOS AND RESULTING ROR SUPPORTING EACH UTILITY'S PRESENTLY EFFECTIVE BASE RATES AND RAM RATES?

A. The test year for the most recent formal rates cases were:

Hawaiian Electric Company	Docket No. 2010-0080	2011
Maui Electric Company	Docket No. 2011-0092	2012
Hawaii Electric Light	Docket No. 2009-0164	2010

. If "single-issue ratemaking" is not undertaken to update these prior rate case ROR findings, ratepayers will still be burdened with these ROR percentage

values in the last moratorium year (2019 or 2020) when this key input data underlying presently effective base and RAM rates will be up to nine years old.

Q. MR. REED QUOTES PRIOR COMMISSION ORDERS DATING BACK TO 1994 AND 1987 IN CONTESTING THE CONSUMER ADVOCATE'S RECOMMENDATION THAT THE ROR SHOULD BE ADJUSTED IN THIS MERGER DOCKET.[52] HAD THE COMMISSION IMPLEMENTED ALL OF THE RATE TRACKING MECHANISMS YOU LISTED ABOVE OR ORDERED TRIENNIAL RATE CASES FOR THE HAWAIIAN ELECTRIC COMPANIES IN 1987 OR 1994?

A. No. The vast expansion of cost tracking and rate adjustment mechanisms that has been approved by the Commission, for the benefit of the Hawaiian Electric Companies, has occurred in years subsequent to 1994. There was no triennial rate case process prescribed until decoupling was implemented.

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[52] Applicants Exhibit-50, page 99.

Q. MS. SEKIMURA ALSO USES THE SINGLE-ISSUE RATEMAKING ARGUMENT, CITING OTHER PRIOR HAWAII RATE CASES.[53] DOES HER TESTIMONY APPLY TO THE HAWAIIAN ELECTRIC COMPANIES IN THE CONTEXT OF THIS MERGER DOCKET AND TO APPLICANTS' PROPOSED RATE CASE MORATORIUM?

A. No. I agree with the general principal that single-issue ratemaking should be avoided in the absence of extraordinary circumstances. Indeed, I have previously testified that rate adjustment mechanisms for isolated costs should generally be limited to instances where such costs are large and volatile, beyond the control of management, not offset by other cost savings, and where administration of such piecemeal ratemaking mechanisms can be administratively practical.[54] However, the unique facts surrounding this merger docket, including a proposed rate case moratorium through 2019 that conflicts with prior Commission-ordered triennial rate cases as well as potential merger savings taking the form of capital cost reductions, dictate an exception of general principles. As noted above, Applicants have also proposed single-issue rate reductions to account for merger benefits they wish to attribute to ratepayers.

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53 Applicants Exhibit-79, pages 37-38.

54 These additional criteria were included in the CA-T-1 testimony I sponsored in Hawaiian Electric's 2011 test year rate case, that is referenced in footnote 27 to Ms. Sekimura's Responsive testimony.

Q. ACCORDING TO MR. REED, YOU HAVE PROPOSED TO, "…UPDATE THE ROE'S FOR HAWAIIAN ELECTRIC, HAWAI'I ELECTRIC LIGHT AND MAUI ELECTRIC WHICH WERE ESTABLISHED MOST RECENTLY IN 2012 AND 2013, TO CONSIDER THE EFFECT OF THE RECENT LOWER INTEREST RATE ENVIRONMENT."[55] HAVE YOU PROPOSED ANY REVISION TO THE MAUI ELECTRIC AUTHORIZED ROE THAT WAS MOST PREVIOUSLY APPROVED BY THE COMMISSION, AS INDICATED BY MR. REED?

A. No. The Commission-authorized ROE for Maui Electric is presently 9.0 percent and it has not been changed in the Consumer Advocate's proposed rate plan. The only ROE changes being proposed would reduce the ROE for Hawaiian Electric and for Hawai'i Electric Light to this same 9.0 percent level that was most recently determined to be reasonable for Maui Electric.

Q. WHEN WAS THE ROE FOR HAWAI'I ELECTRIC LIGHT MOST RECENTLY ESTABLISHED BY THE COMMISSION?

A. As noted above, the test year in Docket No. 2009-0164 was 2010 and the Consumer Advocate's evidence regarding the ROE in that Docket was filed on July 29, 2010. The revenue requirement issues were resolved in a Settlement Agreement in that docket that was filed with the Commission on September 16, 2010. The Commission's Decision and Order No. 30168 was not

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[55] Applicants Exhibit-50, page 100.

issued until February 8, 2012, to incorporate a 50 basis point reduction in the 10.5 percent ROE, but the test year evidence regarding ROE and the Settlement Agreement ROE of 10.5 percent prior to this reduction was dated in 2010 and is now more than five years old.

Q. WHEN WAS THE ROE FOR HAWAIIAN ELECTRIC COMPANY MOST RECENTLY ESTABLISHED BY THE COMMISSION?

A. The test year in Docket No. 2010-0080 was 2011 and the Consumer Advocate's evidence regarding the ROE in that Docket was filed on June 2, 2011. The Commission issued an Interim Decision and Order on July 22, 2011, in that Docket, reciting terms of a Stipulated Settlement Letter dated July 5, 2011, that incorporated an ROE of 10.0 percent and a ROR on rate base of 8.11 percent that was ultimately accepted by the Commission.[56]

[56] Interim Decision and Order, dated July 22, 2011, at 36.

Q. MR. REED STATES, "WITNESS BROSCH'S ASSERTION REGARDING THE ROES FOR HAWAIIAN ELECTRIC AND HAWAI'I ELECTRIC LIGHT ARE UNSUBSTANTIATED BY A COST OF CAPITAL ANALYSIS AND ARE NOT REASONABLE." ARE YOU THE CONSUMER ADVOCATE WITNESS WHO IS RESPONSIBLE FOR CONDUCTING A COST OF CAPITAL ANALYSIS?

A. No. The Consumer Advocate's primary witness supporting the recommended updated ROE for Hawaiian Electric Company and Hawaii Electric Light Company is Mr. Hill. My testimony explains the need for such updating and provides background interest rate trend data to demonstrate that risk free rates of return in U.S. capital markets have declined significantly since the most recent rate case test years that were used by the Commission to establish ROEs for these utilities.

Q. ACCORDING TO MR. REED, "WITNESS BROSCH SUPPORTS HIS PROPOSAL TO REDUCE THE EQUITY RATIO TO 47% THROUGH A REVIEW OF UTILITY HOLDING COMPANY (NOT UTILITY) EQUITY RATIOS."[57] DOES MR. REED AGAIN REFER TO THE WRONG WITNESS ON THIS MATTER?

A. Yes. Again, it is Mr. Hill who sponsors the ROE and equity ratio updated values that are embedded in the Consumer Advocate's proposed rate plan.

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[57] Applicant' Exhibit-50, page 101.

Q. MR. REED CLAIMS THAT HE "BEGAN BY ANALYZING THE UNDERLYING DATA USED TO DEVELOP THE CHART PRESENTED BY MR. BROSCH" AND HE CONCLUDES, "WHILE INTEREST RATES HAVE DECREASED SINCE HAWAIIAN ELECTRIC AND HAWAIʻI ELECTRIC LIGHT FILED THEIR EVIDENCE IN DOCKET NOS. 2009-0164 AND 2010-0080, THAT CHANGE IS NOT SIGNIFICANT WHEN THE COMPARISON IS MADE BASED ON THE DATE OF THE COMMISSION'S ORDER IN THE PAST RATE CASES."[58] HAS MR. REED USED THE CORRECT DATES IN HIS COMPARISONS?

A. No. The Commission does not continue to receive and consider evidence supporting its ROE determinations right up to the date the final rate order is issued. Instead, the Commission considers the filed evidence as well as any stipulated settlement documents that were prepared and submitted into the record much earlier in the rate case proceedings. It is misleading for Mr. Reed to imply that the last Commission-approved ROE levels reflected capital market conditions as of the date of the Commission's final rate order.

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58 Id.

With respect to Hawaiian Electric, I noted previously that a Stipulated Settlement Letter dated July 5, 2011, incorporated an agreed-upon ROE of 10.0 percent that was ultimately accepted by the Commission. In the months of June and July 2011, the average yield on 30-year treasury bonds was 4.23 percent and 4.27 percent, respectively. For year-to-date 2015 through September 8, 2015, the comparable average yield was 2.78 percent, which is at least 145 basis points (1.45 percent) lower than the levels extant when the rate case settlement was reached.

With respect to the earlier Hawaii Electric Light Commission-approved ROE, as I noted earlier, the revenue requirement issues were resolved in a Settlement Agreement that was filed with the Commission on September 16, 2010. The average yield on 30-year treasuries in September of 2010 was 3.77 percent, which is approximately 100 basis points higher than comparable average 2015 to-date yields. This data is supportive of the updated ROE levels that are recommended by Mr. Hill, based upon underlying reductions in market interest rates and the cost of capital.

Q. MR. REED STATES THAT HE, "HAS NOT CONDUCTED A FULL RATE OF RETURN STUDY" BUT HE PROVIDES, IN APPLICANTS EXHIBIT-51, WHAT HE CALLS A, "RANGE OF AUTHORIZED ROE'S FOR INTEGRATED ELECTRIC UTILITIES IN OTHER JURISDICTIONS SINCE JANUARY 2014."[59] CAN YOU PROVIDE A DIFFERENT FORM OF COMPARABLE UTILITY ANALYSIS THE COMMISSION MAY FIND USEFUL IN EVALUATING THE NEED FOR UPDATING OF AUTHORIZED ROES FOR THE HAWAIIAN ELECTRIC COMPANIES?

A. Yes. For the past several years, I participated in the annual formula rate update proceedings of Commonwealth Edison Company and the Ameren Illinois Company. In Illinois, the 30-year treasury yield trend data that I presented in my direct testimony is directly employed to annually update the authorized ROE allowed for the two largest electric utilities in that state. This updating is required under the formula ratemaking statute set forth in Section 16-108.5(c) of the Illinois Public Utilities Act, 220 ILCS 5/16-108.5(c). The inputs to annual formula updated rates are required to, "Include a cost of equity, which shall be calculated as the sum of the following: A) the average for the applicable calendar year of the monthly average yield of 30-year U.S. Treasury bonds published by the Board of Governors of the Federal Reserve System in its weekly H.15 statistical

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[59] Applicants Exhibit-50, page 102.

Release or successor publication; and B) 580 basis points."[60] Using these prescribed calculations, the ROE available to both Ameren Illinois and Commonwealth Edison for the 2014 year was 9.14 percent, which is 580 basis points above average yields on 30-year treasury bonds of 3.34 percent in 2014. If the lower published 30-year treasury yields experienced to-date in calendar year 2015 persist through year-end, the authorized ROE levels in Illinois will be lower than 9.0 percent for 2015.

Q. DOES CONSUMER ADVOCATE WITNESS HILL PROVIDE A MORE DETAILED RESPONSE TO MR. REED'S COMMENTS REGARDING AUTHORIZED RETURNS IN OTHER JURISDICTIONS IN APPLICANTS EXHIBIT-51 AND EQUITY RATIOS IN APPLICANTS EXHIBIT-52 AND TO APPLICANTS' WITNESSES LAPSON AND SEKIMURA REGARDING ROE AND EQUITY RATIO UPDATING?

A. Yes. Mr. Hill is the Consumer Advocate's principal witness on these topics.

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60 See 220 ILCS 5/16-108(c)(3) that is available at: http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=022000050K16-108.5 .

Q. MR. REED STATES THAT "WITNESS BROSCH ASSERTS THAT HIS PROPOSED RATE PLAN IS THE ONLY MECHANISM DESIGNED TO FACILITATE CUSTOMER PARTICIPATION IN THE EXPECTED NET SAVINGS", AND THEN HE CALLS THE ASSERTION "PATENTLY FALSE."[61] DID YOU MAKE SUCH AN ASSERTION?

A. No. While Mr. Reed provides no reference to this assertion he attributes to me, I believe he may be referring to page 8 of my Direct Testimony where I discuss "the proposed rate case moratorium offered by Applicants" [emphasis added] and fatal flaws within that proposal. In this context, I indicate that Applicants' proposed rate case moratorium, with its many conditions and qualifications, may cause more harm to ratepayers than the value of any merger benefits flowing through other rate mechanisms.

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61 Applicants Exhibit-50, page 104.

Q. MR. REED ALSO ATTRIBUTES TO YOU AN "ASSERTION THAT THE SAVINGS THAT YOU CITE COULD BE ACHIEVED BY THE HAWAIIAN ELECTRIC COMPANIES ABSENT THE PROPOSED TRANSACTION."[62] DID YOU MAKE ANY SUCH ASSERTION?

A. No. It is unfair for Mr. Reed to falsely attribute a statement to me and then claim that some vaguely defined, "…solutions and suggestions are missing from [my] testimony" in connection with a topic I did not address.

Q. ACCORDING TO MR. REED, "WITNESS BROSCH'S CONCLUSIONS ARE PREMISED UPON AN UNDERLYING CONCERN THAT THE HAWAIIAN ELECTRIC COMPANIES' EXISTING RATES ARE TOO HIGH. HIS CONCLUSIONS ARE NOT BECAUSE HE DOES NOT BELIEVE THAT NEXTERA ENERGY WOULD BE A GOOD PARTNER FOR THE HAWAIIAN ELECTRIC COMPANIES. ULTIMATELY, WITNESS BROSCH'S CONCERNS ARE BETTER ADDRESSED IN FUTURE RATE PROCEEDINGS, NOT IN THIS MERGER APPROVAL PROCEEDING."[63] HOW DO YOU RESPOND?

A. I have no "underlying concern" about currently effective utility base rate levels unless the proposed merger is approved. If the merger is approved, I agree with Applicants that present rate levels are too high and must be reduced and also

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62 Applicants Exhibit-50, page 113, lines 11-20.

63 Id. page 105.

that traditional rate cases should be avoided for several years during a transition and integration period. Our disagreement with respect to utility rates is limited to the size and duration of the appropriate rate reductions. This disagreement seems inevitable because the value of the "deal" to NextEra is directly tied to the size of the future income stream being acquired and more generous rate reductions for customers directly erode that value.

To clarify the Consumer Advocate's position about rate levels, I offer the following. Applicants' proposed temporary rate credits are unreasonable because the merger-enabled savings touted by Mr. Reed are permanent and ongoing. Applicants' proposed temporary rate credits are inadequately small and largely offset by other benefits for shareholders, because the credits are paired with a base rate case moratorium that contains terms unfair to ratepayers, including:

- The base rate moratorium would perpetuate the over-recovery of excessive cost rates on long-term debt, that were last updated in rate cases occurring several years ago, leaving the savings from recent and planned debt refinancing transactions to benefit only shareholders.

- The moratorium would deny HECO and HELCO ratepayers the benefits of an updated return on equity, even though the Commission intended triennial rate cases to achieve such periodic updating, all while market interest rates have declined since the HECO and HELCO return on equity was last determined by the Commission.
- The moratorium would preclude rate case recognition of the lower equity ratio that is expected to occur under NextEra ownership, as more fully explained in Mr. Hill's testimony.
- The moratorium seeks to continue the existing form of ECAC and RAM, even though the Commission may make further changes in Docket No. 2013-0141 to such mechanisms.
- The moratorium requires acceleration of RAM accrual accounting, which could increase revenue requirements in future rate case proceedings.
- The moratorium requires Commission acceptance of the Above the RAM Cap standards and guidelines proposed by the utilities in Docket No. 2013-0141.

I believe that NextEra could demonstrate its determination to be a "good partner for the Hawaiian Electric Companies" by agreeing to the more balanced and equitable rate plan proposed by the Consumer Advocate and then demonstrating

its ability to perform and achieve the claimed merger savings, for the benefit of both shareholders and ratepayers prospectively.

D. The Consumer Advocate Proposed Rate Plan.

Q. HAS YOUR REVIEW OF APPLICANTS' RESPONSIVE TESTIMONY INDICATED A NEED FOR ANY REVISIONS TO THE CONSUMER ADVOCATE'S PROPOSED RATE PLAN?

A. No. I continue to recommend that, if the Transaction is approved by the Commission, presently effective base rate levels for each of the three Hawaiian Electric Companies be permanently reduced, across all rate schedules, by 0.7 cents per kWh ($0.007) effective at the date the proposed Transaction is consummated.[64] Then, after base rates are reduced, during the 48 months immediately following consummation of the Transaction, the utilities would be precluded from seeking an increase in base rates in the absence of an event or circumstance that creates a compelling financial need for an earlier rate change. Mr. Hill is primarily responsible for the Consumer Advocate's proposed updating of the cost of equity and equity ratio within this rate plan and has responded in his rebuttal testimony to Applicants' witnesses who address the ROE and capital structure issues.

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[64] As noted previously in this testimony, if legal notice requirements preclude a base rate change in the context of a Change in Control docket, the same impact could be achieved by ordering a permanent reduction in RBA/RAM rates until a "next" base rate proceeding is completed after any rate case moratorium period has expired.

Q. ACCORDING TO MS. SEKIMURA, THE "…REVENUE REDUCTION THAT THE CONSUMER ADVOCATE CALCULATED IS TOO LARGE BY $8.7 MILLION AND ITS PROPOSED RATE REDUCTION SHOULD BE 0.6 CENTS PER KWH INSTEAD OF 0.7 CENTS PER KWH."[65] DO YOU UNDERSTAND THE BASIS OF HER CONCERN?

A. I believe this concern is explained later in Ms. Sekimura's testimony, where she states, "In Consumer Advocate Exhibit-13, the Consumer Advocate applied its proposed lower cost of equity and hypothetical capital structure to the 2015 rate base reflected in the Companies' 2015 annual decoupling filing. If its intention was to update the cost of equity and equity ratios underlying the Companies' existing base rates, the Consumer Advocate should have applied those items to the test year rate base approved in each of the Companies last rate case (i.e., 2011 for Hawaiian Electric, 2012 for Maui Electric and 2010 for Hawai'i Electric Light) since those are the rate base amounts that the Companies used to determine their current base rates."[66]

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65 Applicants Exhibit-79, page 36.

66 Id. page 63-64.

Q. DID YOU INTENTIONALLY APPLY THE UPDATED ROE AND CAPITAL STRUCTURE DATA SPONSORED BY MR. HILL TO THE 2015 RATE BASE REFLECTED IN THE HAWAIIAN ELECTRIC COMPANIES' 2015 ANNUAL DECOUPLING FILING?

A. I did. It is necessary to apply the updated and reduced capital cost rates to the most recent rate base values underlying rates that are currently being charged to ratepayers. The Commission's prior ROE and RORB findings from rate orders were used to determine new base rate levels for the prior test years, but these findings were subsequently used to calculate cumulatively increasing Rate Base RAM charges to ratepayers through the decoupling mechanism. The only way to completely restate the impacts for the older overstated costs of debt, equity and equity ratios is to apply the revised RORB to the most recent 2015 rate base values underlying rates currently being charged to customers. As noted earlier in this testimony, the per-kWh distribution of the resulting revenue reduction makes any distinction between base rate and RBA/RAM rate implementation of the rate reduction unimportant.

Q. IN USING THE MORE CURRENT 2015 RATE BASE VALUES FROM DECOUPLING FILINGS, SHOULD YOU ALSO "INCORPORATE THE IMPACT OF THE RAM CAP ESTABLISHED BY THE COMMISSION IN ORDER NO. 32735"[67] AS SUGGESTED BY MS. SEKIMURA?

A. The RAM Cap was effective for the first time in 2015 and did not reduce Rate Base RAM increases in any previous year. The RAM Cap is applied to the overall calculated RAM increase and cannot be directly assigned to components of the RAM. Applicants were asked, in CA-IR-486, whether the RAM Cap that was first imposed in 2015 is believed to have any significant impact upon the Consumer Advocate's proposed revenue reduction and, if so, to provide a detailed statement of assumptions and calculations to quantify the revenue requirement of the RAM Cap. In Applicants' response, no assumptions were stated, but "for illustration purposes" the Company used adjusted 2014 RAM average rate base amounts in place of the 2015 values used in the Consumer Advocate's calculations. This approach improperly assumes that the RAM Cap applied in 2015 completely removed all Rate Base RAM increases in that year, which is certain to overstate the impact of the RAM Cap upon the Consumer Advocate's calculations. Nevertheless, after making this clearly excessive adjustment to the Consumer Advocate's calculations, the resulting required revenue reduction is reduced from $62.6 million to $61.3 million, a

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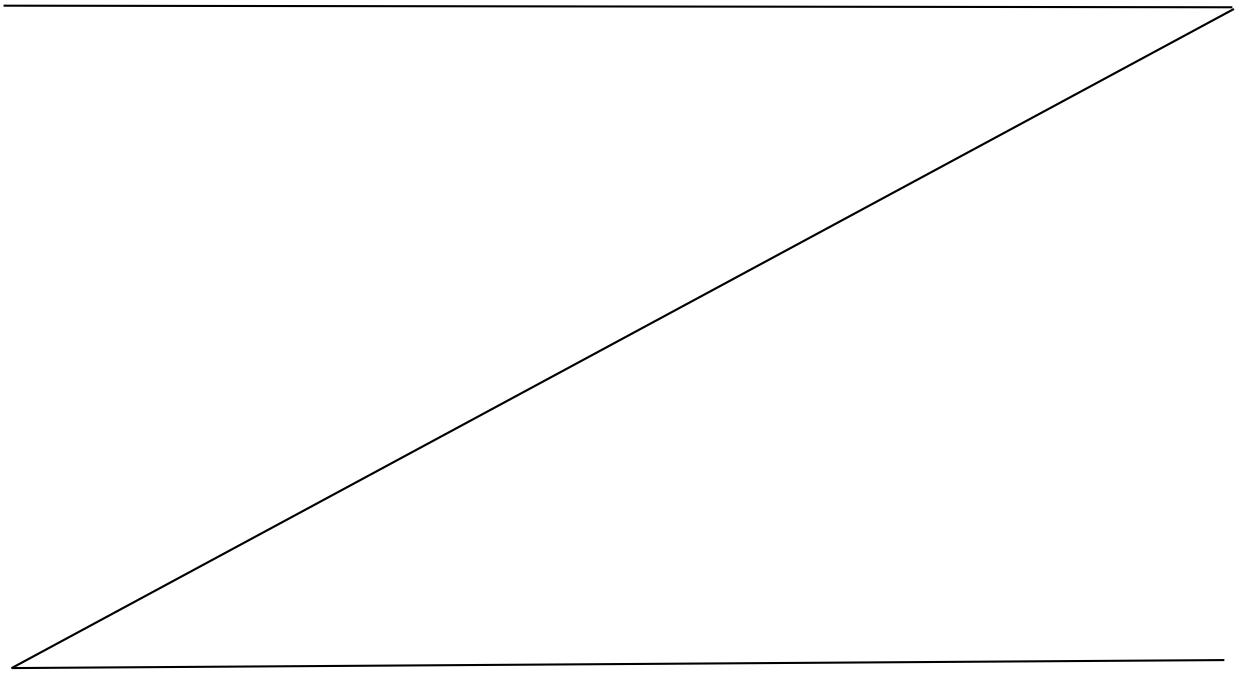
67 Id. page 64-65.

change of about $1.3 million. The resulting per kWh rate reduction would be .68 cents per kWh rather than .70 cents per kWh as recommended in my Direct Testimony.

Q. SHOULD THE CONSUMER ADVOCATE'S PROPOSED RATE ADJUSTMENT BE REDUCED FOR RAM CAP IMPACTS, AS SUGGESTED BY MS. SEKIMURA?

A. No. By the time the merger is consummated next year, assuming Commission approval, another round of Rate Base RAM increases will have been implemented by the utilities. After the impact of 2016 forecasted rate base growth is reflected in next year's decoupling filings, I am confident that the Consumer Advocate's revenue reduction calculations will prove to be conservatively quantified, even if modified for any RAM Cap impacts.



E. New Rate Plan Elements Proposed By Applicants.

Q. MR. GLEASON HAS OFFERED A NEW COMMITMENT NUMBER 10 WITHIN APPLICANTS EXHIBIT-37 THAT HE EXPLAINS IN TESTIMONY AS, "IN ADDITION TO THE FOUR-YEAR GENERAL BASE RATE CASE MORATORIUM AND GUARANTEED REDUCTION IN THE O&M RAM OF $60 MILLION, THE APPLICANTS COMMIT TO REFLECT 100% OF ALL NET NON-FUEL O&M SAVINGS ACHIEVED BY EACH OF THE HAWAIIAN ELECTRIC COMPANIES IN THE FIRST TEST PERIOD FOLLOWING THE PROPOSED GENERAL BASE RATE CASE MORATORIUM FOR THE BENEFIT OF THE HAWAIIAN ELECTRIC COMPANIES' CUSTOMERS."[68] SHOULD THIS BE AN ELEMENT OF THE CONSUMER ADVOCATE'S RATE PLAN?

A. This was already an element of the Consumer Advocate's proposed rate plan. In fact, this was understood by the Consumer Advocate to also be an element of Applicants' proposed rate plan. This new "commitment" is not new at all, but appears to be offered only to formalize what was expected to happen in rate cases after the expiration of any rate case moratorium. In response to CA-IR-389, NextEra confirmed that this "new" commitment, "…does not differ from the proposal made by Applicants in direct testimony."

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[68] Applicants Exhibit-36, page 63.

Q. ANOTHER ELEMENT OF APPLICANTS' "NEW" COMMITMENT NUMBER 10 WOULD LIMIT THE AMOUNT OF RATE CASE INCLUDABLE NON-FUEL O&M EXPENSE AFTER THE MORATORIUM. MR. GLEASON EXPLAINS THIS, STATING, "…THE NON-FUEL O&M TO BE INCLUDED IN REVENUE REQUIREMENTS IN EACH OF THE HAWAIIAN ELECTRIC COMPANIES' FIRST GENERAL BASE RATE CASE FOLLOWING THE FOUR-YEAR GENERAL BASE RATE CASE MORATORIUM WILL BE NO HIGHER THAN THE NON-FUEL O&M IN CALENDAR YEAR 2014, ADJUSTED FOR INFLATION."[69] IS THIS A NECESSARY MERGER CONDITION?

A. It is not necessary, but could add a layer of ratepayer protection if merger integration problems and costs exceed expectations and/or if expected merger-enabled non-fuel O&M savings fail to materialize. As noted previously in this testimony, the Hawaiian Electric Companies projected [redacted],[70] even without merging with NextEra. Therefore, assuming any significantly positive realization of net merger-enabled savings by the end of the moratorium period, zero growth in "real" inflation-adjusted non-fuel O&M expense should be easily achieved in the post-merger environment.

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69 Id.

70 See Confidential and Restricted Attachment 2 to Applicants' Response to CA-IR-211.

Q. SHOULD THE COMMISSION APPROVE "NEW" COMMITMENT NUMBER 10 WITHIN APPLICANTS EXHIBIT-37?

A. This new "commitment" serves a largely cosmetic purpose, but the Consumer Advocate does not object to its inclusion to clarify expected rate case outcomes subsequent to the expiration of any rate case moratorium.

Q. ANOTHER NEW ELEMENT OF APPLICANTS' PROPOSED RATE PLAN IS SET FORTH AS "NEW" CUSTOMER BENEFIT AND RATE COMMITMENT NUMBER 12, WITHIN APPLICANTS EXHIBIT-37, STATED AS, "NEXTERA ENERGY SUPPORTS THE IMMEDIATE ADOPTION UPON CLOSING OF THE FUEL COST INCENTIVE MECHANISM REFLECTED IN APPLICANTS EXHIBIT-45 TO THE RESPONSIVE TESTIMONY OF WITNESS GLEASON, WHICH INCLUDES PENALTIES AND INCENTIVES OF UP TO $10 MILLION ACROSS ALL THREE OF THE HAWAIIAN ELECTRIC COMPANIES BASED UPON FUEL COST PERFORMANCE."[71] SHOULD THIS CONDITION BE ADOPTED?

A. No. There has been no analysis of fuel costs for each of the utilities in sufficient detail to specify a fuel cost incentive mechanism that would be reasonably applied immediately, upon closing of the proposed merger transaction.

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[71] This proposal is more fully explained in Applicants Exhibit-45 and in Mr. Gleason's Responsive Testimony (Applicants Exhibit-36) at pages 64-65.

Mr. Gleason notes that, "[t]his incentive mechanism was described in the Hawaiian Electric Companies' in the decoupling review proceeding"[72] but he fails to indicate that the Consumer Advocate did not support or accept the proposals offered by the utilities in Docket No. 2013-0141. Instead, the Consumer Advocate's filed Initial Brief with regard to fuel adjustment clause modification stated that, "…designing such an ECAC incentive mechanism is a complex undertaking that would require extensive analysis and evaluation, and would need to be designed to complement the other incentive mechanisms in place." That Initial Brief continued with a discussion of a three-step process to investigate and revise ECAC procedures, including: Step 1) an unbundling of energy costs from base rates, Step 2) an independent management audit of incurred fuel and purchased energy costs, and Step 3) an investigative docket to consider amendments to the existing ECAC regulatory framework.[73]

Q. HAVE APPLICANTS CONCEDED THAT MORE WORK IS REQUIRED BEFORE ANY REASONABLE FUEL ADJUSTMENT INCENTIVE MECHANISM CAN BE IMPLEMENTED?

A. Yes. In response to CA-IR-390, Applicants state that they, "…have supplied information on the proposed incentive mechanism to allow parties and the

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[72] Applicants Exhibit-36, page 65.

[73] Docket No. 2013-0141, Consumer Advocate Initial Brief filed June 1, 2015, at 27-31.

Commission to fully analyze and examine the incentive mechanism" but then admit that more detailed work is needed, stating:

> d. At this time, Applicants have not developed a more detailed proposal for the determination of the "Target" fuel cost within the proposed Fuel Cost Incentive Mechanism. There are several important factors that need to be determined, including how to establish the initial basis for the target, how to adjust the basis to establish the target in a particular year, and how and when to adjust the basis. Applicants are willing to and prefer to discuss with the Consumer Advocate the specifics regarding how the target fuel cost can be derived. See also the response to part c. above.
>
> e. The method by which to calibrate and allocate penalties and incentives for each of the three utilities is a concept that should be included in the development process for the Fuel Cost Incentive Mechanism as indicated in the response to part d. above.

The details of any fuel cost incentive mechanism are critically important and can only be developed through careful analysis and modeling of potential outcomes.

Q. SHOULD A FUEL ADJUSTMENT CLAUSE INCENTIVE MECHANISM BE IMPLEMENTED UPON CONSUMMATION OF THE MERGER?

A. No. The Consumer Advocate does not support a rush toward expedited specification and implementation of a fuel adjustment incentive mechanism at this time, particularly if such a mechanism is intended to create, "penalties and incentives of up to $10 million" as suggested by Mr. Gleason.[74] Considerably more deliberate analysis of fuel expense drivers, risks, opportunity costs and

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[74] Applicants Exhibit-36, page 64; Applicants Exhibit-45.

expected outcomes would be needed to develop a balanced and equitable incentive plan for regulation of these costs.

Q. ANOTHER NEW RATE PLAN COMMITMENT APPEARS AS NUMBER 13 IN APPLICANTS EXHIBIT-37, STATED AS, "THE MODIFIED DECOUPLING MECHANISM APPROVED BY THE COMMISSION IN ORDER NO. 32735 SHALL REMAIN IN EFFECT DURING THE GENERAL BASE RATE CASE MORATORIUM PERIOD, SUBJECT TO THE CONDITIONS OUTLINED IN APPLICANTS EXHIBIT-46 TO THE RESPONSIVE TESTIMONY OF WITNESS GLEASON AND ANY COMMISSION-AUTHORIZED CHANGES." SHOULD THIS NEW COMMITMENT BE APPROVED AS A CONDITION OF MERGER APPROVAL BY THE COMMISSION?

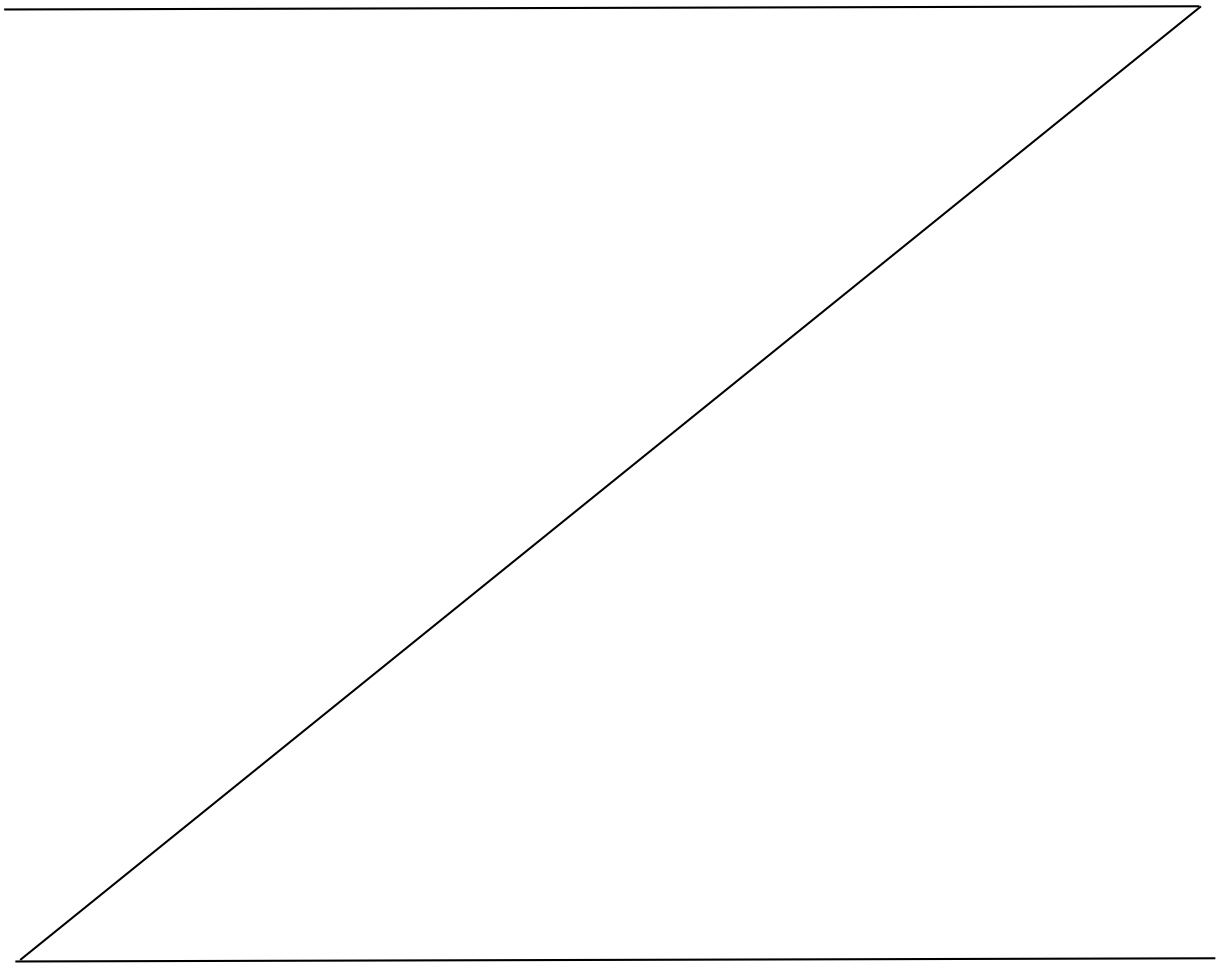
A. No. I understand that the Commission has received briefs and proposals for further modification of the decoupling mechanism in Docket No. 2013-0141 and may issue additional guidance in that Docket on important ratemaking matters including:

- Jointly submitted standards and guidelines for expanded use of the REIP surcharge mechanism, for recovery of qualifying program and project costs outside of the RAM mechanism.

- Separately submitted standards and guidelines, authored by the Hawaiian Electric Companies, for recovery of vaguely defined program and project costs through the RAM and above the RAM Cap, that were opposed by the Consumer Advocate.

- Briefs submitted with respect to potential future modifications to the ECAC.

The Applicants' new "commitment" number 13 appears to tie the Commission's hands with regard to its ongoing jurisdiction over the RAM and ECAC mechanism and should not be adopted in this merger proceeding. The Consumer Advocate shares the Applicants' concerns regarding the importance of detailed specifications for the RAM, REIP and other cost recovery mechanisms that are available to the utilities, but does not believe the public interest is served by granting only the utilities' proposals in Docket No. 2013-0141 as a condition of merger approval.



IV. OTHER ACCOUNTING AND RATEMAKING ISSUES.

A. Transaction and Other Merger-Related Costs.

Q. MS. SEKIMURA CLAIMS THAT, "NONE OF THE TRANSACTION OR TRANSITION/INTEGRATION COSTS OF THE PROPOSED TRANSACTION WILL BE CHARGEABLE OR ALLOCABLE TO ANY OF THE COMPANIES AND THEREFORE NO TRANSACTION COSTS WILL BE BORNE BY THE COMPANIES' CUSTOMERS."[75] SHE THEN LISTS TWO ADDED "FURTHER COMMITMENTS REGARDING TRANSACTION COSTS" THAT ARE NOW BEING PROPOSED BY APPLICANTS.[76] HAVE YOU REVIEWED THESE NEW COMMITMENTS?

A. Yes.

Q. DOES THE FIRST NEW COMMITMENT, THAT IS PROPOSED BY MS. SEKIMURA AND EXPLAINED IN APPLICANTS EXHIBIT-84, SATISFY THE CONSUMER ADVOCATE'S CONCERNS REGARDING MERGER COSTS THAT WOULD BE TREATED AS RECOVERABLE FROM RATEPAYERS?

A. No. It is obvious from Applicants Exhibit-84, which is a copy of Attachment 2 to Applicants' response to CA-IR-136 (supplemented July 16, 2015), that no changes have been proposed by Applicants in response to the

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[75] Applicants Exhibit-79, page 3.

[76] Id. page 69.

Consumer Advocate's concerns. The CA-IR-136 referenced by Ms. Sekimura and included in Applicants Exhibit-84 is the same IR response that I addressed in detail within my Direct Testimony, where I explained concerns about the vaguely defined "definitional boundaries" that Applicants would apply in determining which types of incremental costs could be treated as recoverable from ratepayers.[77] I will not repeat those concerns, since Applicants' position regarding the classification and treatment of merger "Transition/Integration" versus "Costs to Achieve Savings" is apparently unchanged.

Q. MS. SEKIMURA'S TESTIMONY REGARDING MERGER COST CLASSIFICATION IS FOCUSED UPON RESPONDING TO THE CONCERNS STATED BY DOD'S WITNESS.[78] HAS MS. SEKIMURA RESPONDED TO THE CONSUMER ADVOCATE'S CONCERNS ON THIS TOPIC?

A. No. Ms. Sekimura relies upon the same response to CA-IR-136 that I addressed in my direct testimony, but she has not stated any reasons for treating any of her proposed merger cost categories as "recoverable" from ratepayers.

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[77] CA Exhibit-11, pages 67-72 and footnote 67.

[78] Applicants Exhibit-79, page 70.

Q. IF THE MERGER IS APPROVED, SHOULD THE COMMISSION ADOPT YOUR CONDITION REGARDING MERGER COSTS THAT WAS STATED AT PAGE 72 OF YOUR DIRECT TESTIMONY, RATHER THAN MS. SEKIMURA'S MORE NARROWLY CONSTRUCTED COMMITMENT SET FORTH AT PAGE 69, LINE 14 OF HER RESPONSIVE TESTIMONY?[79]

A. Yes. I recommend that all merger-related costs, including the activities and amounts Applicants propose to treat as "Cost to Achieve Savings", be recorded below-the-line so these costs do not impact reported utility operating income. This approach avoids the need for the potentially controversial judgmental classifications of cost proposed by Applicants while recognizing that one purpose of the rate case moratorium period is to facilitate a period for transition and business integration where the costs and savings that result are absorbed by shareholders rather than ratepayers.

Q. HAVE APPLICANTS MODIFIED THE WORDING OF THE COMMITMENT TO NOT SEEK RECOVERY OF GOODWILL AMORTIZATION, IMPAIRMENT OR ACQUISITION PREMIUM COSTS?

A. No. Applicants Exhibit-37 shows commitment number 65 to be unchanged from its "original" form.

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[79] The same commitment is set forth in Applicants Exhibit-37 as "new" number 67 on page 10.

Q. SHOULD THE COMMISSION APPROVE THE ALTERNATIVE WORDING SET FORTH AT PAGE 75 OF YOUR DIRECT TESTIMONY, RATHER THAN APPLICANTS' CONDITION NUMBER 65?

A. Yes. The commitment I propose is more clearly stated and would not allow such costs to be recorded on the utilities' books. This approach eliminates the need to make ratemaking adjustments to recorded values to accurately evaluate utility financial performance and to avoid inadvertent recoveries of such costs through RAM earnings sharing procedures.

B. Ratemaking Adjustments.

Q. IN YOUR DIRECT TESTIMONY, YOU DESCRIBED SEVERAL OTHER CONCERNS REGARDING RATE RECOVERY OF INCENTIVE COMPENSATION, CORPORATE AVIATION, NAMED EXECUTIVE OFFICER COMPENSATION AND CAPTIVE INSURANCE AFFILIATE CHARGES. HAVE APPLICANTS PROPOSED NEW CONDITIONS IN RESPONSIVE TESTIMONY TO ADDRESS THESE CONCERNS?

A. Yes. Applicants Exhibit-37 contains proposed "new" commitments numbered 75, 76, 77 and 78 in response to the ratemaking concerns described in my direct testimony.

Q. DO THESE PROPOSED NEW COMMITMENTS FULLY ADDRESS THE CONCERNS YOU DESCRIBED?

A. No. I acknowledge Applicants effort to prevent detrimental rate impacts through the commitment to "make ratemaking adjustments to remove costs…" for incentive compensation (#75), for corporate owned or leased aircraft (#76), and for Named Executive Officers (#77) during the rate case moratorium and within decoupling earnings sharing calculations.[80] However, each of these new commitments includes the phrase, "until such costs are approved for recovery in rates," leaving ratepayers exposed after the moratorium period to litigation in future rate cases, whenever NextEra elects to assert a need for rate recovery. If NextEra intends to assert the need for rate recovery of such costs in future rate proceedings, it should clearly state this intention now so the Commission can be aware of any detrimental future rate impacts that may result from the proposed merger.[81]

Q. SHOULD THE MORE BROADLY WORDED MERGER CONDITIONS THAT ARE SET FORTH IN YOUR DIRECT TESTIMONY[82] BE APPROVED BY THE COMMISSION TO ADDRESS THE INCENTIVE COMPENSATION, CORPORATE AIRCRAFT AND NAMED EXECUTIVE OFFICER EXPENSES?

A. Yes. The merger conditions I propose do not expose ratepayers to future litigation and potential rate recovery of these costs.

Q. IS A DIFFERENT FORM OF NEW CONDITION PROPOSED BY APPLICANTS IN CONNECTION WITH NEXTERA'S CAPTIVE INSURANCE AFFILIATE?

A. Yes. New commitment number 78 within Applicants Exhibit-37 states:

> In determining annual utility earnings for earnings sharing calculations within the decoupling mechanism in all periods prior to the completion of each utility's next general rate case, NextEra Energy commits that the amount of commercial insurance services or coverage charged or allocated by the NextEra Energy Captive affiliate shall be equal to the actual costs incurred by the Hawaiian Electric Companies in calendar year 2014, escalated by GDPPI thereafter. Applicants Exhibit-82 to the Responsive Testimony of witness Sekimura provides the actual costs incurred in calendar year 2014**.**

Applicants Exhibit-82 is presented by Ms. Sekimura to illustrate how a baseline 2014 insurance expense level would be established for administration of this prescribed ratemaking adjustment during the moratorium period.

Q. DOES THIS PROPOSAL ADDRESS THE CONCERN THAT YOU RAISED IN DIRECT TESTIMONY?

A. Not completely. This approach appears to focus upon avoidance of controversy on this topic during the rate case moratorium period. With this goal in mind, I suggest accepting Applicants' proposed new condition, while replacing the words

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80 Applicants Exhibit-37, page 11.

81 Applicants' response to CA-IR-400 confirms that "Applicants preserved their ability to request recovery of these types of costs in future rate proceedings."

82 CA Exhibit-11, page 91, conditions numbered 7, 9 and 10.

"be equal to" with "not exceeding" so as to limit only increases in insurance costs, while permitting insurance cost reductions to impact shareable earnings.

Q. DOES THIS COMPROMISE APPROACH PROTECT RATEPAYERS FROM POTENTIALLY EXCESSIVE INSURANCE CHARGES FROM NEXTERA'S CAPTIVE INSURANCE AFFILIATE IN FUTURE RATE CASES AFTER THE MORATORIUM PERIOD?

A. No. To address this remaining concern, I suggest retention and modification of the condition originally proposed in my direct testimony, so that it provides:

- No costs for insurance services or coverage from any NextEra Energy Inc. affiliated company shall be allowed recovery in future base rate case proceedings of the Hawaiian Electric Companies without an affirmative finding from the Commission that such costs are prudently incurred, reasonable in amount and do not produce excessive rates of return on invested capital to NextEra Energy or any NextEra Energy affiliated entities.

This approach would preserve an opportunity and obligation for NextEra to demonstrate to the Commission that any future affiliated company insurance arrangements are not detrimental to the interests of ratepayers.

C. Net Operating Loss Tax Benefits.

Q. IN YOUR DIRECT TESTIMONY, YOU DESCRIBED HAWAIIAN ELECTRIC COMPANY'S NET OPERATING TAX LOSS CARRYFORWARD BALANCES AND HOW THE PROPOSED MERGER COULD ADVERSELY IMPACT THIS RATEMAKING ISSUE.[83] WHAT IS APPLICANTS' RESPONSE TO THIS CONCERN?

A. In his Responsive Testimony, Mr. Reed states, "The Applicants agree to treat the Hawaiian Electric Companies as a stand-alone company when calculating its income taxes for all regulatory filings."[84]

Q. DID YOU PROPOSE USING A STAND-ALONE BASIS OF ACCOUNTING FOR UTILITY INCOME TAX LOSSES, AS IMPLIED BY MR. REED'S REFERENCE TO SOME "AGREEMENT" ON THIS SUBJECT?

A. No. Mr. Reed apparently misunderstood the income tax issue I raised. My direct testimony explains why stand-alone accounting for utility tax losses has been rejected historically, in calculating Rate Base RAM increases, because of the utilities' ability to monetize their income tax losses through the filing of HEI consolidated tax returns, which include the positive taxable income of American Savings Bank ("ASB"). As noted in my Direct Testimony, this consolidation

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83 CA Exhibit-11, pages 79-82.

84 Applicants Exhibit-50, page 116.

benefit would be lost after the proposed merger is completed, when the Hawaiian Electric Companies would no longer file consolidated group tax returns with ASB, but would instead then be included in the consolidated Federal income tax return of NextEra Energy, Inc.[85]

Q. HAS ANY NEW REGULATORY COMMITMENT BEEN PROPOSED BY APPLICANTS ON THIS TOPIC?

A. Yes. A new Capitalization and Financing Commitment number 64 is added to Applicants Exhibit-37 that states:

> The merger with NextEra Energy will have no effect on the standalone regulatory tax treatment of the Hawaiian Electric Companies. Note that the regulatory treatment of the standalone deferred tax asset related to net operating loss carryforwards is an open issue still to be resolved in a future general rate case. NextEra Energy will indemnify the Hawaiian Electric Companies for any liability for federal, state or local income taxes (including interest and penalties related thereto, if any) in excess of the Hawaiian Electric Companies' standalone liability for federal, state or local income taxes (including interest and penalties related thereto, if any) for any period in which the Hawaiian Electric Companies are included in a consolidated income tax return with NextEra Energy.

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The first two sentences of this new commitment appear to represent Applicants' response to the concern I referenced, while the "indemnification" provisions appear to relate to a concern raised by DOD witness Mr. Smith.[86]

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[85] CA Exhibit-11, pages 79-81.

[86] DOD Exhibit 1, pages 106-108.

Q. DOES THIS PROPOSAL TO TREAT THE HAWAIIAN ELECTRIC COMPANIES AS A STAND-ALONE COMPANY WHEN CALCULATING ITS INCOME TAXES FOR ALL REGULATORY FILINGS DO ANYTHING TO REMEDY THE PROBLEM THAT YOU DESCRIBED IN TESTIMONY?

A. No. The Applicants' proposed commitment to stand-alone accounting for income taxes, much like Mr. Reed's testimony on this issue, is not responsive to the Consumer Advocate's concern. This new commitment would do nothing to preserve the utilities' current ability to rapidly monetize the utilities' federal Net Operating Loss ("NOL") tax losses through the inclusion of such tax losses within a consolidated federal income tax return that includes American Savings Bank's federal taxable income.

Q. HAVE THE APPLICANTS CONFIRMED THAT THEIR NEWLY OFFERED COMMITMENT NUMBER 64 IS NOT RESPONSIVE TO THE CONSUMER ADVOCATE'S STATED CONCERN?

A. Yes. In response to CA-IR-482, part (a), Applicants state, "[i]t is confirmed that the Consumer Advocate's witness Brosch's recommendation is different than the treatment proposed by NextEra Energy." That response continues with the following statements:

> b. It is not clear whether the Consumer Advocate's concern is inconsistent with the treatment offered by NextEra Energy, but it is confirmed that NextEra Energy does not agree with the proposed condition on page 82 of Mr. Brosch's testimony. It is NextEra Energy's understanding that there is not expected to be any net

operating loss ("NOL") carryforward remaining at December 31, 2015, and that under current law there is no future NOL carryforward projected for the Hawaiian Electric Companies. Therefore, Mr. Brosch's proposed condition is both inappropriate and unnecessary.

c. No, the Applicants do not agree with the proposed condition on the referenced page, as cited below:

> No deferred tax assets recorded by the Hawaiian Electric Companies that arise from income tax net operating loss carryforwards, federal tax credit carryforwards or alternative minimum tax carryforwards shall be included in the rate base of the Hawaiian Electric Companies within either future base rate case filings or Rate Base Return on Investment decoupling filings that are submitted by the Hawaiian Electric Companies.

As indicated in the responses to CA-IR-111 and CA-IR-373 and Commitment 64 (Applicants Exhibit-37, page 10), the regulatory treatment of the stand-alone deferred tax asset related to NOL carryforwards is an open issue still to be resolved in a future rate case. The exclusion of the stand-alone NOL deferred tax assets from utility rate base was a general concession to the accumulated deferred tax balance for decoupling purposes only.

Q. WAS THE CONDITION YOU PROPOSED IN DIRECT TESTIMONY INTENDED TO PRESERVE THE "GENERAL CONCESSION" THAT IS REFERENCED IN THE ABOVE RESPONSE?

A. Yes. The ratemaking condition I proposed in direct testimony was intended to preserve the past elimination of utility tax loss NOL deferred tax asset amounts in determining rate base within future electric rate cases and RAM calculations. The Applicants' added commitment does exactly the opposite, locking in

"stand-alone" accounting for any utility income tax loss carryforward events that may occur in the future.

Q. DOES THE APPLICANTS' STATEMENT (QUOTED ABOVE) THAT, "UNDER CURRENT LAW THERE IS NO FUTURE NOL CARRYFORWARD PROJECTED FOR THE HAWAIIAN ELECTRIC COMPANIES" MAKE YOUR PROPOSED MERGER CONDITION "INAPPROPRIATE AND UNNECESSARY" AS SUGGESTED IN CA-IR-482?

A. No. Applicants projected levels of taxable income under current federal income tax law does not preclude future tax law changes or unexpected changes in taxable income that could result in future utility tax loss carryforwards. One need look no further than the decoupling review process completed earlier this year, where adjustments were required to account for retroactive changes in 2014 income tax law that extended bonus depreciation in that year and increased deferred tax balances in rate base, even though such law changes were not anticipated in the prior year's decoupling calculations.[87] If no future utility NOL carryforward deferred tax asset balances are recorded in 2015 or expected thereafter, as projected by the Applicants, then the impact of the

[87] In Order No. 32866 issued May 28, 2015, at 20, the Commission found, "The HECO Companies shall adjust the target revenues calculated for the 2014 RAM Period and applied to the twelve month period of June 2014 through May 2015, so as to pass through to customers the benefits of the full 2014 RAM benefit of the bonus depreciation target revenue impacts estimated by the Companies and enumerated in the SOP."

Consumer Advocate's proposed merger condition would have no applicability or future financial impact and should be readily accepted by Applicants.

Q. SHOULD THE APPLICANTS' NEWLY PROPOSED COMMITMENT NUMBER 64, THAT SPECIFIES "STAND-ALONE REGULATORY TAX TREATMENT" FOR THE UTILITIES, BE REJECTED IN FAVOR OF THE CONDITION EXCLUDING NET OPERATING LOSS CARRYFORWARDS THAT WAS PROPOSED IN YOUR DIRECT TESTIMONY?

A. Yes.

V. SUMMARY OF RATEMAKING CONDITIONS.

Q. HAVE YOU REVISED THE LIST OF ACCOUNTING AND RATEMAKING CONDITIONS THAT ARE SUPPORTED IN YOUR REBUTTAL TESTIMONY?

A. Yes. The following list of revised and updated conditions is proposed for utilization in this docket, in the event the Commission determines that the Proposed Transaction should be approved:

Ratemaking Conditions:

1. To ensure significant tangible public interest benefits to Hawaiian Electric Companies' ratepayers, Hawaiian Electric Company, Hawaii Electric Light Company and Maui Electric Company shall file tariffs reducing each of the non-fuel base energy charge rates to each customer class by $0.007 (seven tenths of one cent) per kWh, to be effective upon consummation of the proposed Change in Control, with corresponding prospective downward adjustment to the target revenues of each utility for Revenue

Balancing Account purposes. This condition is expected to reduce annual revenues of the HECO Companies by $62.4 million at currently estimated sales volumes.

2. The Hawaiian Electric Companies shall not submit an application seeking a base rate/revenue increase prior to the date 48 months subsequent to the date of closing of the proposed Change in Control. This condition shall not preclude requests for base revenue reduction filings or revenue-neutral tariff modifications during this moratorium period. If circumstances arise that create a compelling financial need for a base rate/revenue increase that violates this rate case moratorium period, the base revenue increase shown to be justified under such circumstances shall be revised downward to reflect a rate of return on common equity penalty reduction of 100 basis points (1.0 percent) from the otherwise appropriate common equity return levels.

3. The decoupling mechanism last approved by the Commission in Order No. 32735 issued March 31, 2015 in Docket No. 2013-0141, shall remain in effect during the rate case moratorium period described in the immediately preceding condition, subject to any changes ordered by Commission from time to time.

4. The Rate Base RAM – Return on Investment within the Rate Adjustment Mechanism ("RAM") filings submitted by each of the Hawaiian Electric Companies, for all periods after closing of the proposed Change in Control and until a next general rate case order, shall be revised to reflect an approved return on Common Equity of 9.0 percent and a Common Equity ratio of 47 percent (with corresponding upward adjustment to the long term debt capital ratio). The same return on Common Equity and Common Equity Ratio assumptions should be utilized in AFUDC rate determination calculations for all periods after closing of the proposed Change in Control and until a next general rate case order.

5. All costs directly incurred by, or allocated to the Hawaiian Electric Companies, as a result of the proposed Change in Control, including transaction-related fees and expenses to seek and receive shareholder and regulatory approvals, shareholder litigation costs, business integration and transition expenses and other costs to achieve merger savings shall be recorded in non-operating expense accounts that are not reflected in utility operating income accounts and such recorded costs shall be excluded from any base rate increase requests and in determining annual utility earnings for Earning Sharing calculations within the decoupling mechanism.

6. No costs arising from any Acquisition Premium or Goodwill amortization, impairment or related charge to expense or income shall be directly incurred by, allocated to, or recorded on the books of the Hawaiian Electric Companies as a result of the proposed Change in Control.

7. No costs arising from incentive compensation payable to any employee of NextEra Energy, Inc. or any NextEra subsidiary or affiliated entity, or of the Hawaiian Electric Companies shall be charged or allocated to any Operating Expense accounts or to any Plant in Service accounts of the Hawaiian Electric Companies.

8. No deferred tax assets recorded by the Hawaiian Electric Companies that arise from income tax net operating loss carryforwards, federal tax credit carryforwards or alternative minimum tax carryforwards shall be included in the rate base of the Hawaiian Electric Companies within either future base rate case filings or Rate Base Return on Investment decoupling filings that are submitted by the Hawaiian Electric Companies.

9. No costs associated with aviation assets owned or leased and/or operated by NextEra Energy, Inc., or any entity affiliated with NextEra Energy, Inc., shall be charged or allocated to, or recorded to any Operating Expense accounts or to any Plant in Service accounts of the Hawaiian Electric Companies.

10. No costs for compensation of NextEra Energy Inc.'s most highly compensated "Named Executive Officers", for purposes of financial reporting, shall be assigned or allocated to any Operating Expense or Plant in Service accounts of the Hawaiian Electric Companies.

11. [New] In determining annual utility earnings for earnings sharing calculations within the decoupling mechanism in all periods prior to the completion of each utility's next general rate case, NextEra Energy commits that the amount of commercial insurance services or coverage charged or allocated by the NextEra Energy Captive affiliate shall not exceed the actual costs incurred by the Hawaiian Electric Companies in calendar year 2014, escalated by GDPPI thereafter.

12. [Revised] No costs for insurance services or coverage from any NextEra Energy Inc. affiliated company shall be allowed recovery in future base rate case proceedings of the Hawaiian Electric Companies without an affirmative finding from the Commission that such costs are prudently incurred, reasonable in amount and do not produce excessive rates of return on invested capital to NextEra Energy or any NextEra Energy affiliated entities.

Q. IN YOUR OPINION, IF ALL OF THESE CONDITIONS WERE ACCEPTED BY THE APPLICANTS, WOULD THE PROPOSED TRANSACTION BE CONSISTENT WITH THE PUBLIC INTEREST FROM A RATEMAKING PERSPECTIVE?

A. I continue to understand that there are many other concerns with the Proposed Transaction that are addressed in the testimonies of other Consumer Advocate witnesses. However, with regard to the specific concerns addressed in my testimony, the proposed conditions in this listing serve to adequately mitigate my stated concerns with respect to ratemaking issues.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes. It does.

CA EXHIBIT-30
DOCKET NO. 2015-0022

REBUTTAL TESTIMONY AND EXHIBIT

OF

STEVEN C. CARVER

ON BEHALF OF
THE DIVISION OF CONSUMER ADVOCACY

SUBJECT: **Affiliate Transactions and Safeguards, Cross-Subsidization, Cost Allocation Guidelines, Regulatory Oversight, Merger Conditions**

CA EXHIBIT-30
DOCKET NO. 2015-0022

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REBUTTAL TESTIMONY OF STEVEN C. CARVER

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Steven C. Carver. My business address is P.O. Box 481934, Kansas City, Missouri 64148.

Q. WHAT IS YOUR PRESENT OCCUPATION?

A. I am a principal in the firm Utilitech, Inc., which specializes in providing consulting services for clients who actively participate in the process surrounding the regulation of public utility companies. Our work includes the review of utility rate applications, as well as the performance of special investigations and analyses related to utility operations, cost allocation and ratemaking issues.

Q. ARE YOU THE SAME STEVEN C. CARVER THAT PREVIOUSLY FILED DIRECT TESTIMONY ON BEHALF OF THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("CONSUMER ADVOCATE") IN THIS PROCEEDING?

A. Yes. My direct testimony and accompanying attachments were previously filed as CA Exhibit-16 through CA Exhibit-19.

Q. PLEASE SUMMARIZE THE PURPOSE OF YOUR REBUTTAL TESTIMONY.

A. My rebuttal testimony addresses portions of the responsive testimony of Applicants'[1] witnesses Mr. Eric S. Gleason (Applicants Exhibit-36), Mr. John J. Reed (Applicants Exhibit-50) and Ms. Tayne S. Y. Sekimura (Applicants Exhibit-79). My rebuttal testimony is generally limited to topics I discussed in direct testimony including affiliate transactions, cross-subsidization, cost allocations, and merger conditions.

I. CROSS-SUBSIDIZATION.

Q. IN RESPONSIVE TESTIMONY, APPLICANTS' WITNESS SEKIMURA DISCUSSES AFFILIATE TRANSACTIONS AND PROPOSED SAFEGUARDS TO PROTECT AGAINST CROSS-SUBSIDIZATION.[2] HAVE YOU REVIEWED THAT TESTIMONY?

A. Yes. Ms. Sekimura's testimony discusses various protections proposed by the Applicants to ensure that the HECO Companies[3] and their customers are not harmed by the activities and businesses of NextEra Energy entities and subsidiaries. Some of those protections and commitments were addressed in the

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1 The "Applicants" collectively refers to Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), Maui Electric Company, Limited ("MECO"), and NextEra Energy, Inc. ("NextEra Energy" or "NEE").

2 *See* Ms. Sekimura's Responsive Testimony, Applicants Exhibit-79 at 3-11.

3 The "HECO Companies" collectively refers to HECO, HELCO, and MECO.

Applicants' direct testimony, including conditions to the 1982 Agreement,[4] while others are newly proposed in the Applicants' responsive testimony.[5]

Q. ARE THE APPLICANTS AND THE CONSUMER ADVOCATE IN AGREEMENT REGARDING THE CONDITIONS AND SAFEGUARDS THAT ARE NEEDED TO PROTECT CUSTOMERS OF THE HECO COMPANIES FROM POTENTIAL CROSS-SUBSIDY ISSUES IN THE EVENT THE COMMISSION WERE TO APPROVE THE APPLICANTS' MERGER REQUEST?

A. No. A subsequent testimony section will address differences between the Consumer Advocate and the Applicants with regard to the conditions to the 1982 Agreement. Of the additional conditions (i.e., other than those related to the 1982 Agreement) that I proposed in direct testimony, the Applicants have addressed and accepted a modified version of several and rejected one of my affiliate recommendations.[6] There are two notable differences that merit comment and discussion regarding the additional conditions.

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4 *Id*. at 6-8.

5 *Id*. at 9-11.

6 *See* Applicants Exhibit-55 at 4-5, for a summary of Applicants' response to the Consumer Advocate conditions (i.e., listed items 21-26). Also, *see* Applicants Exhibit-37 at 7-8, Affiliate Transaction and Cost Commitments 47-52.

Q. PLEASE DISCUSS THE FIRST DIFFERENCE.

A. My direct testimony explained that the Applicants have not provided sufficient information satisfying the Consumer Advocate's concern that the HECO Companies could see higher shared services costs post-merger. To help ensure that any costs charged to the HECO Companies by Florida Power & Light Company ("FPL") or other NEE affiliates are reasonable relative to historical pre-merger cost levels, the Consumer Advocate proposed two related conditions. The first of which is:[7]

> 3. In all general rate cases following the proposed Change in Control, the respective filing of each of the HECO Companies shall include direct testimony and exhibits explaining and quantifying all affiliate transactions of each type. Additionally, testimony shall include information needed to explain and reconcile the proposed amount of test year shared services costs charged or allocated by FPL or any other NextEra affiliate in comparison to the actual costs charged/allocated to the HECO Companies by HEI [(Hawaiian Electric Industries, Inc.)] or self-provisioned by the HECO Companies in calendar year 2014, escalated by GDPPI thereafter.

By Affiliate Transaction and Cost Commitment 51,[8] Applicants committed to provide "direct testimony and exhibits demonstrating the reasonableness of its affiliate transactions" in future rate cases but ignored the portion of the Consumer Advocate recommendation that such testimony "explain and reconcile

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[7] *See* CA Exhibit-16 at 41-45.

[8] *See* Applicants Exhibit-37 at 8.

the proposed amount of test year shared services costs charged or allocated by FPL or any other NextEra affiliate in comparison to the actual costs charged/allocated to the HECO Companies by HEI or self-provisioned by the HECO Companies in calendar year 2014, escalated by GDPPI thereafter." Although the Applicants did commit to work with the Commission and the Consumer Advocate to determine minimum filing requirements in advance of the first post-merger rate case, the Consumer Advocate did not propose the comparison of test year shared services costs to "the actual costs charged/allocated to the HECO Companies by HEI or self-provisioned by the HECO Companies in calendar year 2014, escalated by GDPPI thereafter" in a vacuum.

For any meaningful effort to demonstrate the reasonableness of future cost levels, one key question is: In relation to what? The "what" should be escalated 2014 actual costs as proposed by the Consumer Advocate. While such condition terms would not limit whatever information NEE and the HECO Companies might choose to produce to support the reasonableness of shared services costs in that future test year, the Commission should require the preparation and filing of the proposed comparison and explanation of variance from a baseline of 2014 actual escalated costs. If the Applicants truly believe that FPL will be more cost effective in the provision of shared services costs post-merger than a combination of HEI and the HECO Companies, then there should be no reasonable objection to this Consumer Advocate recommendation.

The second related condition is:

> 6. In determining annual utility earnings for Earning Sharing calculations within the decoupling mechanism in all periods prior to the completion of each utility's next general rate case, the amount of shared services costs charged or allocated by FPL or any other NextEra Affiliate shall not exceed the actual costs charged/allocated to the HECO Companies by HEI or self-provisioned by the HECO Companies in calendar year 2014, escalated by GDPPI thereafter. [Emphasis Added].

By Affiliate Transaction and Cost Commitment 52,[9] Applicants largely committed to the Consumer Advocate's recommendation but with one major deficiency. In the above condition, the Consumer Advocate proposed that the annual utility earnings for Earning Sharing calculations within the decoupling mechanism limit the amount of shared services costs charged or allocated by FPL or any other NextEra Affiliate to "shall not exceed" the actual costs charged/allocated to the HECO Companies by HEI or self-provisioned by the HECO Companies in calendar year 2014, escalated by GDPPI.

As proposed, Affiliate Transaction and Cost Commitment 52 replaces the Consumer Advocate's proposed "shall not exceed" language with the phrase "shall be equal to." In other words, the annual Revenue Balancing Account/Revenue Adjustment Mechanism ("RBA/RAM") earnings sharing calculation would include actual shared services costs charged/allocated to the HECO Companies by HEI

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9 *See* Applicants Exhibit-37 at 8.

or self-provisioned by the HECO Companies using 2014 actual escalated costs. The "shall not exceed" language was intentional on the part of the Consumer Advocate.

As discussed in my direct testimony,[10] Applicants have filed testimony discussing cost reductions that are expected to result from the proposed change in control, but have yet to provide details regarding the scope of shared services and related costs FPL and its affiliates are likely to provide to the HECO Companies' much less the estimated cost thereof. If those economies or savings are not realized, then the "shall not exceed" language will ensure that HECO Companies' customers in the post-merger provision of shared services do not effectively pay for higher costs indirectly through lower achieved earnings which would negatively impact the earnings sharing component of the RBA/RAM mechanism. However, if savings in the provision of shared services are realizable, the "shall not exceed" language will ensure that fictional shared services costs are not effectively charged to HECO Companies' customers by artificially understating achieved earnings for RBA/RAM earnings sharing purposes.

In response to CA-IR-442, Applicants were unable to provide any pinpoint reference to the responsive testimonies or exhibits that discuss the "shall be equal to" language. However, the response to subpart (a) of CA-IR-442 states, in part:

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[10] *See* CA Exhibit-16 at 45.

> The Applicants do acknowledge, however, that if actual shared services costs are lower than what was charged to the HECO Companies by HEI for comparable services in 2014, escalated by GDPPI, then that is what would be used in the Earnings Sharing calculations and are therefore willing to modify the language in Commitment 52 to reflect the language "shall not exceed".

The Consumer Advocate's proposed "shall not exceed" shared services cost limitation for RBA/RAM purposes has now been accepted by the Applicants and will help protect customers of the HECO Companies in a post-merger environment until such time as affiliate transactions can be carefully reviewed in each company's first post-merger rate case, assuming merger approval.

Q. PLEASE DISCUSS THE SECOND DIFFERENCE BETWEEN THE APPLICANTS AND THE CONSUMER ADVOCATE THAT YOU PREVIOUSLY REFERENCED.

A. My direct testimony also recommended an affiliate transaction condition that is generally referenced as "asymmetrical pricing" as discussed in the following excerpt:[11]

> 1. In all future transactions between the Hawaiian Electric Companies and 1) NextEra Energy or 2) NextEra Energy affiliates, other than FPL; transactions involving the transfer of goods or services shall be priced asymmetrically to the benefit of the Hawaiian Electric Companies and their ratepayers. Asymmetric pricings means that the Hawaiian Electric Companies always pay the lesser of cost-based or market-based prices, whenever purchasing goods or services from an affiliated entity (other than FPL), and that Hawaiian Electric Companies always receive the higher of cost-based or

[11] *See* CA Exhibit-16 at 11.

> market based prices whenever selling goods or services to such affiliates. Transactions between the HECO Companies and FPL, both regulated entities, will be at cost.

Q. HOW DID THE APPLICANTS RESPOND?

A. Applicants Exhibit-55 represents a catalog of the conditions proposed by the various Parties in this proceeding, organized by topic. According to Mr. Reed[12] once the catalog was compiled, NextEra Energy and the Concentric Energy Advisors, Inc. ("Concentric") team discussed each condition, identified the underlying concern and considered whether the concern could be addressed by: (i) accepting the proposed condition, (ii) partially accepting the proposed condition, (iii) offering a substitute commitment, or (iv) agreeing to further consider the concern after the merger was consummated. This process led to the development of several revisions to NextEra Energy's original merger commitments and to the development of 54 new merger commitments. The revised list of Applicants' commitments are presented in Applicants Exhibit-37, as discussed in Mr. Gleason's Responsive Testimony (Applicants Exhibit-36).[13]

At page 4, Applicants Exhibit-55 lists the Consumer Advocate's proposed asymmetrical pricing condition as item #21. The Applicants' Response column simply states: "Reject asymmetric pricing as described by proposed condition.

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12 *See* Mr. Reed's Responsive Testimony, Applicants Exhibit-50 at 254.

13 *Id.* at 253-254.

Addressed by commitments 51 and 52. The utilities already bear the burden of proof on the reasonableness of costs." The Applicants rejection of asymmetrical pricing, without discussion, is a bit surprising.

CA-IR-443 was submitted to determine whether Applicants responsive testimony on this point might have been overlooked during my review. Applicants' response stated:

> Mr. Reed is the Applicants' witness who is sponsoring the proposed rejection of asymmetric pricing. While Mr. Reed does not address this specific recommendation in his Responsive Testimony (Applicants' Exhibit-50), his overall position is that there are adequate safeguards in place to prevent affiliate transactions from resulting in cross subsidization. See Section IX of Applicants' witness Reed's Responsive Testimony. Therefore, Mr. Reed does not believe that it is necessary that transactions involving the transfer of goods or services between regulated and unregulated affiliates be priced asymmetrically, as proposed by Consumer Advocate's witness Carver.

Q. IS THAT RESPONSE SUFFICIENT TO REJECT THE CONSUMER ADVOCATE'S ASYMMETRICAL PRICING RECOMMENDATION?

A. No. Applicants had an opportunity to address the asymmetrical pricing issue in detail in responsive testimony, but chose to not do so. In discussing why the Thomas Report should no longer be applicable if the merger transaction is approved, Mr. Gleason stated, in part:[14]

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[14] *See* Mr. Gleason's Responsive Testimony, Applicants Exhibit-36 at 73.

> The circumstances that gave rise to the Thomas Report and the recommendations in that report were to address the negative impacts that could have arisen from HEI's diversification into non-utility investments. NextEra Energy has stated it has no plans to create any new non-utility subsidiaries under Hawaiian Electric Holdings, and should it desire to do so at any point in the future, NextEra Energy has agreed to seek Commission approval.
>
> The Thomas Report sought to address the potential negative impact the financial performance of a non-utility subsidiary could have on the financial standing of the Hawaiian Electric Companies, which could have adverse consequences to utility customers. Here the Hawaiian Electric Companies' affiliation with NextEra Energy has the opposite effect.

Mr. Reed took a similar position regarding the Thomas Report:[15]

> The recommendations contained in the Thomas Report that were intended to safeguard the Hawaiian Electric Companies from negative impacts from HEI's non-utility operations or investments should not apply to NextEra Energy (i.e., NextEra Energy, Inc. and its affiliates and subsidiaries that are not under HEH [(Hawaiian Electric Holdings)]). The Applicants have committed to a number of specific safeguards to protect the Hawaiian Electric Companies' customers from any business and financial risks associated with the operations of NextEra Energy and/or any of its affiliates. In the case of the non-utility subsidiaries of HEI, the financial performance of those companies could reasonably have been considered to materially affect the financial standing of the Hawaiian Electric Companies, which could have had adverse consequences for customers in the state. The degree of financial separation between the non-utility subsidiaries and the HEI utilities was not sufficient to effectively ring fence the utilities from their affiliates. That is not the case with the Hawaiian Electric Companies and NextEra Energy under the Proposed Transaction. Given the ring fencing commitments offered by NextEra Energy, the stand-alone credit ratings and prohibition on inter-company credit facilities or collateralization, and the corporate structure under which HEH will operate, there is little or no reason to believe that the operations of

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15 *See* Applicants Exhibit-50 at 216-217.

> NextEra Energy's other businesses could adversely affect Hawaii's customers.

Ms. Sekimura also commented in a similar manner:[16]

> However, as explained in the Applicants' Direct and Responsive Testimony, it appears that the recommendations of the Thomas Report will no longer be relevant after the consummation of the Proposed Transaction. The Thomas Report sought to address the potential negative impact the financial performance of a non-utility subsidiary could have on the financial standing of the Hawaiian Electric Companies, which could have adverse consequences to utility customers. Here, the Companies' affiliation with NextEra Energy has the opposite effect. I agree with Applicants' witnesses Gleason and Reed that given NextEra Energy's ring-fencing commitments, stand-alone credit ratings, and prohibition on inter-company credit facilities or cross-collateralization or cross-financial guarantees, as well as the corporate structure under which Hawaiian Electric Holdings will operate, there is little or no reason to believe that the operations of NextEra Energy's other businesses could adversely affect the Companies' customers here in Hawai'i.

As I stated in my direct testimony, NextEra Energy "has more than 900 subsidiaries of varying size, and regularly acquires or sells subsidiaries."[17] The fact that NextEra Energy has no stated plans to create new non-utility subsidiaries under Hawaiian Electric Holdings, as represented by Mr. Gleason, does not lessen the Consumer Advocate's concern. As explained by Mr. Reed:[18]

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16 *See* Applicants Exhibit-79 at 11-12.

17 *See* CA Exhibit-16 at 14 and 17.

18 *See* Applicants Exhibit-50 at 217.

> …corporate service responsibilities are embedded in FPL serving the NextEra Energy enterprise. In addition, under the NextEra Energy delivery model, services can be provided on an as needed basis from affiliate to affiliate. If the Proposed Transaction is approved, this would mean that employees of the Hawaiian Electric Companies could provide services to other NextEra Energy affiliates and vice versa, furthering the efficacy of this delivery model.

The sheer magnitude of the number of NextEra non-utility subsidiaries and the presently unknowable potential for "affiliate to affiliate" transactions is the very premise supporting asymmetrical pricing. In a post-merger environment, the Commission should expect affiliate transactions to be significantly more complex than at present and, in turn, a greater potential to exist for regulated entities to directly or indirectly cross-subsidize NEE's unregulated affiliates.

In response to subpart (b) of CA-IR-443, the Applicants provided their understanding of the Consumer Advocate's asymmetric pricing recommendation:

> The Applicants understand asymmetric pricing as used by Consumer Advocate's witness Carver to mean a pricing structure that favors the regulated entity. In other words, purchases by the regulated entity from an un-regulated affiliate should be at the lower of cost or market for like goods and services and sales by the regulated entity to an un-regulated affiliate should be at the higher of cost or market for like goods and services.

I would add two points to this explanation. First, transactions between regulated affiliates should be recorded at cost. Second, the Consumer Advocate recognizes that market prices may not be available in every situation.[19] Whenever market

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[19] *See* Applicants Exhibit-79 at 8, lines 1-10.

prices are not reasonably available, transactions between a regulated and an un-regulated affiliate would instead be recorded at cost.

If the Applicants anticipate few, if any, transactions between the HECO Companies and the hundreds of NEE nonregulated affiliates, the concept of asymmetrical pricing should be of little concern. In the event that the Commission approves the proposed transaction, the Commission should adopt the Consumer Advocate's asymmetrical pricing recommendation.

Q. DO YOU HAVE ANY FINAL COMMENTS REGARDING ASYMMETRICAL PRICING?

A. In response to CA-IR-444, Applicants explained that

> NextEra Energy is a single state holding company system as defined in § 366.3(c)(1) of FERC's [(Federal Energy Regulatory Commission)] regulations. Under the provisions of § 35.44(b)(4), companies within a "single state holding company system" may sell "general administrative and management non-power goods and services" to each other at cost, provided that the only parties to such transactions are affiliates or associate companies within such holding company system. Florida Power & Light Company and NextEra Energy's subsidiaries employ a mix of at cost pricing and asymmetric pricing (the general affiliate pricing rule set forth in § 35.44(b)(1)) as appropriate in sales of non-power goods and services. Accordingly, all such non-power affiliate transactions conform to the requirements in § 35.44(b). We currently conform to existing applicable requirements and will maintain compliance under FERC rules either pursuant to waiver from FERC or subject to FERC rules if NextEra Energy is no longer a single state holding company.

Pending finalization of a Hawaii-specific cost allocation manual, Applicants' merger Transaction Commitment 50[20] would apply the FPL Cost Allocation Manual ("CAM") methodologies[21] and approaches for all transactions between NextEra Energy affiliates and the Hawaiian Electric Companies. At page 3, the 2015 FPL CAM states: "FERC recognizes explicitly in Order 707-A that the 'at cost' pricing rules would be extended to single state holding companies that do not have centralized shared services companies."

The Consumer Advocate recently submitted two information requests regarding FERC Order 707-A.[22]

- CA-IR-542 sought a copy of FERC Order 707-A for reference purposes.
- CA-IR-543 inquired whether, assuming Commission approval of the proposed merger, a combined NEE/FPL/HEH would continue to satisfy the 18 CFR 366.3(c)(1) definition of a single-state holding company "as a holding company that derives no more than 13 percent of its public-utility company revenues from outside a single state".[23]

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20 *See* Applicants Exhibit-37 at 7-8.

21 *See* Applicants Exhibit-53 for the 2015 FPL CAM.

22 At the time this testimony was finalized, the responses to CA-IR-542 and CA-IR-543 remained outstanding.

23 *See* Footnote 15 of FERC Order 707-A.

In response to OP-IR-1, NEE estimated that the HECO Companies' approximate out-of-state share of NextEra Energy's total revenues alone would have been 15% in 2014.[24] If the proposed transaction is approved, NEE may no longer meet the criteria for a "single-state holding company" which could result in further revisions to the FPL CAM and the asymmetrical pricing terms contained therein.

II. 1982 AGREEMENT.

Q. DOES THE APPLICANTS' RESPONSIVE TESTIMONY PROPOSE ANY FURTHER REVISIONS TO THE CONDITIONS SET FORTH IN THE 1982 AGREEMENT?

A. Yes. While the 1982 Agreement is referenced in several of Applicants responsive exhibits,[25] the primary discussion of the various conditions of the 1982 Agreement and the Applicants' revised recommendations regarding the same are discussed by Ms. Sekimura (Applicants Exhibit-79) and detailed on Applicants Exhibit-86.[26]

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[24] *See* Applicants' response to OP-IR-1 and CA Exhibit-16 at 37-38.

[25] *See*, for example, Applicants Exhibit-37 (Commitment 83) and Applicants Exhibit-55 (at 7-8).

[26] Applicants Exhibit-86 reflects the Applicants' proposed updated modifications to the 1982 Agreement. *See* Applicants Exhibit-79 at 6.

Q. DID YOU DISCUSS THE CONSUMER ADVOCATE'S RECOMMENDATIONS REGARDING THE 1982 AGREEMENT IN DIRECT TESTIMONY?

A. Yes. The 1982 Agreement contained 24 specific conditions, which the Applicants proposed to modify in direct testimony (see Applicants Exhibit-31 showing both the original condition language and the Applicants' direct testimony proposed revisions).[27] Many of Applicants' direct testimony modifications related to corporate name changes and other ministerial revisions. However, some of the original proposed modifications are more substantive.

The Consumer Advocate's direct testimony[28] also proposed various modifications to the 1982 Agreement language as set forth on CA Exhibit-19, which also compared the Consumer Advocate's proposed modifications with those from Applicants Exhibit-31. Mr. Hill's direct testimony discussed the Consumer Advocate's recommendations regarding the Applicants' position on Conditions 8-11 and 16 while my direct testimony addressed the differences between the Applicants and the Consumer Advocate on the remaining Conditions to the 1982 Agreement.[29]

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[27] The Applicants proposed modifications to the 1982 agreement were also set forth in Exhibit 8 of the original application filed in the pending docket.

[28] See the direct testimonies of Consumer Advocate witnesses Dean Nishina (CA Exhibit-1), Steven Hill (CA Exhibit-7) and Steven Carver (CA Exhibit-16).

[29] Name changes and other ministerial differences are not discussed in CA Exhibit-16. There were no differences between the Applicants and the Consumer Advocate on Conditions 4, 6, 7, 12, 17, 18, and 20-24. *See* CA Exhibit-16 at 56-62 and CA Exhibit-19.

Q. HAVE YOU REVIEWED THE RESPONSIVE TESTIMONY OF MS. SEKIMURA REGARDING THE 1982 AGREEMENT, AS DISCUSSED IN APPLICANTS EXHIBIT-79 AND SET FORTH IN APPLICANTS EXHIBIT-86?

A. Yes. CA Exhibit-31 updates CA Exhibit-19 to incorporate both the Applicants' direct testimony (Applicants Exhibit-31) and revised responsive testimony (Applicants Exhibit-86) positions for comparison to the Consumer Advocate's recommended language regarding the 1982 Agreement.[30]

Q. BASED ON YOUR REVIEW OF THE APPLICANTS' RESPONSIVE TESTIMONY, ARE THERE FEWER DIFFERENCES BETWEEN THE APPLICANTS AND THE CONSUMER ADVOCATE REGARDING THE 1982 AGREEMENT?

A. Yes. The remaining differences between the Applicants and the Consumer Advocate are addressed in this portion of my rebuttal testimony -- notably Conditions 2, 3, 13, 15 and 16 to the 1982 Agreement.

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[30] The Consumer Advocate's rebuttal testimony proposes the same modifications to the 1982 Agreement conditions as recommended in CA Exhibit-19.

Q. PLEASE DISCUSS THE ISSUE REGARDING CONDITION 2.

A. Condition 2 relates to the requirement that the Applicants will voluntarily produce witnesses to appear at hearings when directed by the Commission. In responsive testimony, Ms. Sekimura conveys the impression that the Consumer Advocate is the party seeking to alter the Condition 2 language established in the 1982 Agreement:[31]

> Q. Please discuss the Consumer Advocate's proposed revisions to Condition 2.
>
> A. The Consumer Advocate has proposed two revisions to Condition 2. First, the Consumer Advocate proposes to change the word "an" to "any" so that the condition would apply to any NextEra Energy "employee, officer, director, agent or other representative." The Applicants object to this condition on the grounds that it is overly broad. Potentially subjecting every employee, officer, director, agent or other representative of NextEra Energy – regardless of their position and/or location – to the jurisdiction of the Commission in Hawai'i could have unfair and unduly oppressive ramifications.[32]

Contrary to Ms. Sekimura's assertion, Condition 2 of the 1982 Agreement clearly used the word "any" not "an." As disclosed at page 2 of Applicants Exhibit-31, it is the Applicants that have proposed "changing" the word, not the

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31 *See* Applicants Exhibit-79 at 22.

32 In support of this statement, footnote 14 to Ms. Sekimura's responsive testimony refers to "Applicants' response to CA-IR-115." This citation is misplaced. The topic of CA-IR-115 relates to Condition 3 to the 1982 Agreement, not Condition 2. Presumably, Ms. Sekimura intended to reference Applicants' response to CA-IR-114.

Consumer Advocate. The Consumer Advocate is merely proposing to keep that language unchanged from the 1982 Agreement.

More specifically, Applicants propose changing the phrase "when requested in writing or in open hearing, shall voluntarily have any employee…" as contained in the original 1982 Agreement to "when requested in writing or in open hearing, shall voluntarily have an employee…" My direct testimony[33] referred to the Applicants' response to CA-IR-114(a) wherein NEE expressed concern that the word "any" could be used to compel "every single employee…[or] dozens or hundreds of NextEra Energy employees" to appear and testify before the Commission. In response to CA-IR-312(b), NEE admitted that "Applicants have no such evidence" that the Commission has unreasonably demanded that every single employee or dozens or hundreds of employees of the HECO Companies appear to testify.

After reviewing Ms. Sekimura's responsive testimony, CA-IR-446 was submitted specifically to determine whether Ms. Sekimura possessed any evidence that the Commission has unreasonably demanded employees of the HECO Companies appear to testify. Subpart (b) of the CA-IR-446 information request used language[34] from Applicants' response to CA-IR-114 cited above.

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33 *See* CA Exhibit-16 at 59.

34 *See* CA-IR-114(a) wherein NEE expressed concern that the word "any" could be used to compel "every single employee…[or] dozens or hundreds of NextEra Energy employees" to appear and testify before the Commission.

Apparently finding such language offensive, the HECO Companies objected to the question "on the grounds that this information request is argumentative and misstates the testimony." I find it interesting that the HECO Companies seem to find this language argumentative, as I found the Applicants' response to CA-IR-114 to be both argumentative and offensive.

Nevertheless, the response to subpart (b) of CA-IR-446 "confirmed" that Ms. Sekimura possesses no evidence or experience that the Commission has unreasonably demanded that every single employee or dozens or hundreds of employees of the HECO Companies appear to testify. This element of Applicants' proposed change to Condition 2 is based solely on unfounded, hypothetical concerns, which have no factual basis.

Absent some evidence or history of regulatory abuse, the Consumer Advocate believes that it would be inadvisable for the Commission to unnecessarily tie its own hands by agreeing to willingly forego its authority to require the appearance at hearings of NEE or other affiliate personnel that the Commission believes necessary to its regulation of Hawaii utilities. On a related note, it would seem that Applicants' witness Reed agrees:[35]

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[35] *See* Applicants Exhibit-50, at 232.

Q. What is your response to intervenor witnesses who express concern that the distance and the time differential between Hawai'i and Florida will diminish the Commission's regulatory authority and oversight?

A. I do not believe these concerns have merit. The fact that Hawai'i is 5,000 miles away from Florida, or that there is a six-hour time difference in no way reduces the ability of the Commission to effectively regulate the electric utilities in Hawai'i. The Commission is not being asked to take on regulating a utility in Florida. NextEra Energy has committed to maintaining local management of the Hawaiian Electric Companies, and will respond in a timely manner to all Commission and Staff requests for information needed to perform its duties as regulator/auditor.

It is NEE that is seeking to acquire regulated Hawaii utilities and manage those utilities from "5,000 miles away" from a location with "a six-hour time difference." It is NEE that needs to conform to Hawaii's regulatory process, not the Commission that should alter its regulatory oversight capability to accommodate NEE's unfounded concern. Adoption of the Applicants' proposed change to Condition 2, at a time when NEE is asking the Commission to rule favorably on the proposed acquisition, has the potential to result in future pleadings and litigation wherein NEE might claim that the word "an" allows it to decline producing knowledgeable and responsible personnel to appear before the Commission. It is the Commission that should properly make those decisions, not management personnel from 5,000 miles away.

After all, it is the Applicants' proposal that seeks to change the word "any" to "an" regarding the production of relevant witnesses or experts. So far, they have failed to demonstrate any history of Commission abuse and the Applicants' proposed change should be denied.

Q. WHAT DIFFERENCE REMAINS WITH REGARD TO CONDITION 3?

A. In responsive testimony, Ms. Sekimura discusses the Applicants' original modifications to Condition 3[36] and proposes to further modify the condition.[37] The Applicants' recommendations appear to limit the Commission's investigative rights to NextEra entities or affiliates "that provide services chargeable to the Utility Corporation."[38] In direct testimony, the Consumer Advocate also proposed to insert the phrases "or impact shared services costs allocable" and "and/or other NextEra affiliates, as necessary" to recognize that affiliate data needs may arise that go beyond direct chargeable transactions.[39]

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36 *See* Applicants Exhibit-31 at 2.

37 *See* CA Exhibit-31 for a comparison of the Applicants' original and modified Condition 3 language with the Consumer Advocate's proposed language.

38 *See* Applicants Exhibit-86 at 2 and Applicants Exhibit-79 at 23-25.

39 *See* CA Exhibit-16 at 59-60 and CA Exhibit-19 at 2.

As discussed in the response to CA-IR-115 and Ms. Sekimura's responsive testimony, the Applicants explained that the original Condition 3 language was overly broad[40] and that the Consumer Advocate's proposed changes to Condition 3 appeared to be overly broad[41] and go beyond the Commission's statutory authority. After objecting to CA-IR-312(c), NEE indicated that "Applicants have no such information," that the Commission has exceeded its statutory authority because of the original language in the 1982 Agreement, or that the HECO Companies have found that language to be unduly burdensome.

In responsive testimony, Mr. Reed attempts to allay concerns raised by the Planning Office and the Consumer Advocate regarding affiliate books and records access:

> However, NextEra Energy has agreed to additional merger commitments that provide additional documentation of all affiliate services and transactions, the submission of a new Hawai'i-specific CAM within 90 days after the closing, commitments regarding testimony and exhibits in all future base rate cases demonstrating the reasonableness of all affiliate transactions, and a commitment that ratemaking adjustments will be made for the amount of shared services costs charged or allocated to the Hawaiian Electric Companies during the base rate moratorium so that the amount included in rates will not exceed the actual costs of comparable corporate services charged by HEI and the Hawaiian Electric Companies to the utilities in 2014, on an inflation-adjusted basis. These commitments should effectively address the parties' concerns about the reasonableness of the shared services costs that the

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40 *See* Applicants' response to CA-IR-115.

41 *See* Applicants Exhibit-79 at 23-24.

> Hawaiian Electric Companies will experience after the Proposed Transaction is complete.[42]

Q. DO THE APPLICANTS' ADDITIONAL MERGER COMMITMENTS RESOLVE YOUR CONCERNS IN THE CONTEXT OF CONDITION 3?

A. No. In spite of now having two rounds of testimony, the Applicants have failed to define or adequately explain the meaning or scope of services provided by NextEra entities or affiliates that would qualify as "services chargeable to the Utility Corporation." However, Ms. Sekimura did offer in responsive testimony:

> Upon further review, however, it appears the terms of this condition as initially proposed by the Applicants may have been too narrow (since Hawaiian Electric Holdings is a holding company with no premises to inspect). Accordingly, the Applicants propose to amend that last sentence of Condition 3 so that it reads: "For purposes of investigation, the Commission shall have the right to enter the premises of Hawaiian Electric Holdings and/or other NextEra affiliates that provide services chargeable to the Utility Corporation, as necessary, during normal working hours and to review any and all records, books or documents of every nature and kind which relate to the investigation or inquiry."[43]
> [Original Emphasis]

While this further modification is helpful, the specific information or nature of the "services chargeable" to which Ms. Sekimura refers remains undefined. CA-IR-491 and CA-IR-492 were submitted specifically to clarify this very point and

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42 *See* Applicants Exhibit-50 at 225-226.

43 *See* Applicants Exhibit-79 at 24.

determine the magnitude of the philosophical difference between the Consumer Advocate and the Applicants on Condition 3.

In response to CA-IR-491, Applicants clarified that the phrase “services chargeable to the Utility Corporation” would include both direct charges and allocable charges to the HECO Companies for purposes of triggering access to affiliate books and records. However, Applicants state that such access “does not extend to the books and records of affiliates that do not provide services to the Hawaiian Electric Companies, but are simply included in the overall allocation calculation.” Under the Applicants' modified Condition 3 language, the Commission would also not have access to the books and records of any nonregulated entity that FPL chose to exclude from the development of the allocation factors used to apportion FPL shared services costs. Data verification and testing is a critical element of protecting Hawaii consumers from potential cross-subsidization of unregulated affiliates that can result from the misallocation of common costs.

Basically, as I interpret the response to CA-IR-491, neither the Commission nor the Consumer Advocate would have access to books and records data of unregulated affiliates in order to test, verify and potentially modify FPL's treatment of those affiliates in the shared services allocation process. If that is a correct interpretation of Applicants’ position, FPL would be the sole decider whether and how nonregulated affiliates are considered in the development of allocation factors

applied to shared services costs – such a restriction is unacceptable and should be rejected by the Commission.[44]

In response to CA-IR-492, Applicants stated that under revised Condition 3 language, the Consumer Advocate would not have the right to "enter the premises" of HEH or any other NextEra affiliate for books and records review. However, Applicants have "committed to work with the Consumer Advocate to make the necessary information available to perform reviews of affiliate transactions between the Hawaiian Electric Companies and NextEra Energy affiliates." The Applicants are also "confident that the information needed to allow the Consumer Advocate to review the affiliate transactions between the Hawaiian Electric Companies and all NextEra Energy affiliates can be made available in Hawai'i."[45]

Citing to Applicants Exhibit-50 at 207, LOL-IR-500 inquires about NextEra's commitment to transparency in affiliate transactions and cost allocations. Applicants respond in part by stating: "NextEra Energy has committed to provide the Commission with the information needed regarding affiliate transactions and costs allocations, in order to carry out its regulatory oversight and statutory responsibilities."

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[44] *See* Applicants' response to CA-IR-491.

[45] *See* Applicants' response to CA-IR-492.

However, it is unclear whether this “information” would include any data of unregulated affiliates in order allow the Consumer Advocate to test, verify and potentially modify FPL's treatment of those affiliates (i.e., inclusion or exclusion) in the shared services allocation process. If no data for unregulated affiliates is intended to be provided to the Consume Advocate, similar to the Commission’s access language referenced in response to CA-IR-491, such a limitation is unacceptable and should be rejected by the Commission.

The Applicants are encouraged to clarify the record in Surrebuttal testimony regarding whether the Consumer Advocate will or will not be provided documentation to test, verify and modify FPL’s allocation factor treatment based on an independent assessment conducted through the discovery process.

Q. WHY IS THIS INFORMATION IMPORTANT?

A. It appears that the Applicants oppose clarifying that the Commission’s affiliate transaction investigation rights extend to those NEE entities that might provide services directly chargeable to the HECO Companies as well as to those affiliates whose existence and operations might “impact shared services costs allocable to” the HECO Companies. Applicants appear to imply that NEE will produce affiliate information, but only address unregulated affiliate data in response to CA-IR-491 and CA-IR-492. FPL may choose to exclude NEE unregulated affiliates from the allocation of shared services costs, but the Consumer Advocate or the Commission may require additional data to explore the reasonableness of such

exclusion or need data in order to include such affiliates in allocation factor development. These Consumer Advocate information requests go directly to the heart of this issue. Based on my reading of those responses, the Consumer Advocate is rightfully concerned about affiliate data access and the auditability, verifiability and reasonableness of allocated shared services costs the HECO Companies may seek to recover in future rate cases.

Q. PLEASE EXPLAIN THE NATURE OF THE ISSUE BETWEEN THE APPLICANTS AND THE CONSUMER ADVOCATE REGARDING CONDITION 13.

A. Applicants propose to delete Condition 13, claiming it is ambiguous, unclear and already addressed by existing statutory provisions. In responsive testimony, Ms. Sekimura states that "deleting Condition 13 should not have any material impact on the risks to the Companies' assets or liabilities" citing to HRS § 269-19 as already requiring Commission approval prior to transfer property.[46]

Inexplicably, Applicants then contend that Condition 13 could result in an undue burden on Applicants to obtain prior Commission approval to transfer utility property that is already retired or no longer in use:[47]

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46 *See* Applicants Exhibit-79 at 18.

47 *Id*. At 19.

Q. Why are the Companies proposing to delete Condition 13?
A. As indicated in Applicants Exhibit-31, on its face, Condition 13 could result in the undue burden of obtaining prior Commission approval to transfer utility property that is already retired or no longer used and useful for utility purposes. In consideration of deletion of this condition, the Applicants would agree to file an annual report of properties transferred.

So, if preapproval of asset transfers that are addressed by Condition 13 are already required by HRS § 269-19, the Applicants have failed to establish that Condition 13 has been administratively unworkable since 1982 or will be unduly burdensome in the future. Accepting the Applicants' interpretation of HRS § 269-19 at face value, the deletion of Condition 13 will not relieve the prior approval "burden" about which Applicants complain – unless the Applicants believe that the deletion of Condition 13 will allow NextEra to repurpose assets previously used for utility service for monetary gain without seeking regulatory authority to do so.

The Consumer Advocate has only proposed to insert references to "NextEra" in the original Condition 13 language and opposes Applicants' proposed deletion of the requirement that the Commission must approve property transfers. In responsive testimony,[48] Applicants' offer to file a report annually identifying what was transferred without any materiality threshold. Ms. Sekimura's responsive testimony cites to prior examples (i.e., donation of retired personal computers and

[48] *Id*. At 19-21.

peripheral equipment to non-profit organizations; two concrete culvert covers and four concrete pipe trench covers, scheduled for disposal, to the Honolulu Fire Department; and a retired boat and trailer to the Clean Islands Council) that involve donations of property to unaffiliated non-profit groups or to government linked entities.

Assuming the Commission approves the Applicants' merger request, the potential for future affiliated entity property transfers, about which the Consumer Advocate is concerned, goes far beyond the historical property donations recounted by Ms. Sekimura. Condition 13 should be retained to ensure the timely filing of requests with the Commission for approval of property transfers, rather than learning of potentially material property transfers to unregulated affiliates long after the fact.

Q. PLEASE EXPLAIN THE DIFFERENCE REGARDING CONDITION 15.

A. As indicated in my direct testimony, the only change proposed by the Consumer Advocate to Condition 15 is to insert the phrase "and provide access to the required books and records of NextEra affiliates."[49] In responsive testimony, Ms. Sekimura states:[50]

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[49] *See* CA Exhibit-19 at 6, with emphasis added to the above quote.

[50] *See* Applicants Exhibit-79 at 26-27.

Q. Please discuss the Consumer Advocate's proposed revision to Condition 15.

A. As proposed in Applicants Exhibit-31, Condition 15 requires the Companies to maintain a complete set of their "books or accounts and supporting records in the State of Hawai'i." The Consumer Advocate's proposed modification would expand this to cover the "books and records of NextEra affiliates . . . ."

The Applicants object to the Consumer Advocate's proposal on the grounds that it is overly broad. Certain books and records of NextEra Energy affiliates are voluminous and only available outside of Hawai'i. While the Applicants are certainly willing to maintain books and records regarding inter-affiliate transactions in Hawai'i, requiring NextEra affiliates outside of Hawai'i that do not enter into Hawai'i-related inter-affiliate transactions would be impracticable. Based on the discussion above, the Applicants propose that Condition 15 be further modified to read as follows: "Utility Corporation shall always maintain a complete set of their books of accounts and supporting records and provide reports concerning intercompany transactions for NextEra affiliates in the State of Hawai'i."

Ms. Sekimura overreaches with her criticism of the Consumer Advocate's proposed addition to Condition 15. As noted previously, the Consumer Advocate has proposed that "<u>access</u> [emphasis added] to the required books and records of NextEra affiliates" be provided in Hawaii. "Access" is readily distinguishable from a requirement that a complete set of the books and records of all NextEra affiliates be "maintained" in Hawaii. With today's virtual private networks, broadband internet connections, enterprise report writing and software remote data access capability, the Consumer Advocate intentionally used the word "access" in the proposed language added to Condition 15.

Further, this additional language was proposed due to the likely need for Commission or Consumer Advocate representatives to "access" certain affiliate data from time to time and that sufficient resources may not be available for the Commission or the Consumer Advocate to feasibly send personnel to Juno Beach or some other mainland destination to access and review affiliate data or supporting documentation. Due to the current ability to produce and share electronic data files at otherwise remote locations, the proposed "access" requirement is not and should not be a burdensome revision.

The Applicants' opposition to expanding the "books and records" language to include "access" to NextEra affiliate data in Hawaii is somewhat perplexing. It is unclear whether the Applicants simply misunderstood the nature of the Consumer Advocate's recommendation or intend to use the location of affiliate information 5,000 miles away from Hawaii as an effective barrier to data production. In any event, it is the Consumer Advocate's desire to avoid unnecessary travel. Notably, the Consumer Advocate is not seeking the wholesale shift of all affiliate books and records to Hawaii, rather just a commitment that "access" to required data will be produced in Hawaii for review. Additionally, "access" should also accommodate any Commission or Consumer Advocate consultants involved in future regulatory engagements who happen to be located on the mainland and could travel to Florida for purposes of accessing affiliate data, which may actually be easier and more cost effective than having those consultants travel to Hawaii to access data.

Curiously, Applicants' response to CA-IR-440(c) declined to commit to funding the cost of out-of-state travel that the Commission and the Consumer Advocate personnel might incur, if Hawaii access to NEE affiliate data is not prescribed:

> The Applicants will work with the Commission and Consumer Advocate to make information available to perform reviews of affiliate transactions. The Applicants are not willing to commit to fund travel to and from Florida as the information necessary to facilitate review of affiliate transactions can be made available in Hawai'i.

Q. DO YOU HAVE ANY FURTHER COMMENTS WITH REGARD TO CONDITION 15?

A. Yes. There are several portions of Mr. Reed's responsive testimony that generally relate to Condition 15 that merit comment. First, in responding to concerns raised by parties other than the Consumer Advocate regarding affiliate transactions and cross-subsidization concerns, Mr. Reed stated:[51]

> If the Proposed Transaction is approved, NextEra Energy has committed to providing the Commission and its Staff with the necessary data to fully audit the company's affiliate transaction procedures and accounting practices. These data will be maintained in a transparent manner and will be provided to the Commission and its Staff in a timely manner upon request.[193] In addition, <u>stakeholders will have the opportunity to review and challenge any affiliate transactions and cost allocations in the traditional rate case process</u>. In my view, it is not reasonable to hold NextEra Energy to a different, higher standard than the Commission would expect from a regulated public utility that had not recently been party to a merger. I see no

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51 *See* Applicants Exhibit-50 at 205-206 and footnote 192.

> basis for this, other than the unsupported allegations from parties about all the things that could possibly go wrong if ownership of the Hawaiian Electric Companies were transferred to NextEra Energy. [Emphasis Added]
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> _____
> FN 193 FPL's SAP system capabilities provide robust controls and transactional transparency while reducing errors and are therefore far superior to the use of excel spreadsheet which is currently in use at the Hawaiian Electric Companies.

Presumably, it was not Mr. Reed's intent to exclude the Consumer Advocate from the above discussion of data access, but Mr. Reed may not be familiar with the role that the Consumer Advocate serves in the Hawaii regulatory process. Given Mr. Reed's commitment regarding document access and the "opportunity to review and challenge any affiliate transactions and cost allocations", the Consumer Advocate would expect a cooperative discovery environment involving affiliate matters, should the Commission approve the Applicants' merger request. Further, Mr. Reed's praise of the robust control and transactional transparency of FPL's SAP system capabilities fits nicely with my earlier discussion of the distinction between "access" and "maintenance" of affiliate books and records in Hawaii.

Second, Mr. Reed addresses concerns raised by parties other than the Consumer Advocate claiming that the audit process is not sufficient to protect against concerns about cross-subsidization that arise from affiliate transactions.[52] Basically, Mr. Reed argues:

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52 *Id*. at 211-215.

- Tawhiri has not provided any support that the audit mechanism has not protected against affiliate transaction abuses in the utility industry, which is not at all Mr. Reed's experience in his 39 years in the industry.

- NextEra Energy has successfully used its affiliate transaction policies and procedures and financial reporting controls in Florida for many years, and more recently in Texas. These controls do not exist solely for regulatory purposes but embody the framework of intercompany transaction external reporting.

- If NextEra Energy's affiliate transaction practices resulted in abuses, that fact would have been uncovered by now either through SOX testing, external auditing, internal auditing or multiple years of regulatory review.

- Whether the rate case process can be relied upon to protect customers from cross-subsidization, the Hawaiian Electric Companies have filed rate cases frequently in recent years, so the financial records of the three electric utilities have been closely reviewed by the Commission Staff and other interested parties.

- Given this significant recent experience, the Commission and others should be well prepared and able to review the accounting and financial records of the Hawaiian Electric Companies under the ownership of NextEra Energy and to identify any areas of concern for further review by the Commission.

A key element enabling sufficient regulatory review of affiliate transactions to protect against cross-subsidization is for regulatory participants (e.g., Commission and its Staff and the Consumer Advocate) to have timely access to necessary affiliate data – that is, without the need for pleadings, depositions and discovery hearings to compel data production. The desire to avoid a difficult regulatory

environment in future rate cases is the very reason for the additional language the Consumer Advocate proposed to include in Condition 15.

Third, Mr. Reed states that all regulated and unregulated operating entities do not take all services provided by FPL. Rather, "[e]ach operating entity is served with a customized set of corporate center services by FPL including corporate governance and compliance, human resources, finance, corporate communications and information technology."[53] This is not at all surprising and is consistent with my experience reviewing affiliate transactions, regardless whether shared corporate service responsibilities are embedded within a regulated affiliate, such as FPL, serving the NextEra Energy enterprise or provided by a separate service company assigned such responsibilities. Regardless of the form of organization, the data needed by regulators to review and evaluate the reasonableness of costs directly assigned or allocated to a regulated affiliate are much the same. Timely access to data, enabling verification and evaluation, is critical.

Fourth, Mr. Reed and NextEra Energy seek to assure the Commission and Consumer Advocate that they will be able to appropriately regulate the cost of these shared corporate services ultimately provided to the Hawaiian Electric Companies, whether allocated or directly charged.[54] If the merger transaction is

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53 *Id*. at 220-221.

54 *Id*. at 222-223.

approved by the Commission, the evaluation of the affiliate transaction process including allocation factor development, cost pool charges, direct charges and the propriety of including/excluding other affiliates from cost responsibility should be open and transparent – which is the very purpose of the Consumer Advocate's recommended additions to Condition 15.

Fifth, Mr. Reed claims that I contend that NextEra Energy should commit to granting the Commission and the Consumer Advocate unfettered access to all books, records and other information owned or controlled by NextEra Energy and its subsidiaries and affiliated entities.[55] Such a claim is simply untrue. As stated previously, I do expect that the process for the Commission and the Consumer Advocate to gain access to NEE affiliate data, transactional information, cost support and allocation factor development will be transparent and open. But, if a transparent and open process is considered by Applicants to represent unfettered access, which I do not believe it is, then Mr. Reed's criticism would be well placed. However, I presume that neither Mr. Reed nor NextEra have any intention of withholding affiliate information, refusing to produce information in a timely manner or denying requested information because a request: (i) does not precisely identify specific documents or data in the form maintained by FPL or NEE or (ii) relates to an unregulated NEE affiliate.

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55 *Id*. at 225-226.

Finally, Mr. Reed does state that "NextEra Energy has committed to providing data and information in a timely and transparent manner so that the Commission and its Staff have access to the information they need to audit and evaluate the Hawaiian Electric Companies themselves, as well as any transactions that may occur between the Hawaiian Electric Companies and other affiliates of NextEra Energy."[56] So, the language the Consumer Advocate proposes to add to Condition 15 should be neither problematic nor burdensome.

Q. IN LIGHT OF MR. REED'S ASSERTIONS THAT AFFILIATE DATA WILL BE PROVIDED IN A TIMELY AND TRANSPARENT MANNER, DOES THE CONSUMER ADVOCATE STILL RECOMMEND THAT THE "ACCESS" LANGUAGE REMAIN IN CONDITION 15?

A. Yes. In responsive testimony, Ms. Sekimura conveyed Applicants' objection to providing data for NextEra affiliates outside of Hawaii that do not enter into Hawaii-related inter-affiliate transactions.[57] CA-IR-440 and CA-IR-441 were submitted to further clarify the Applicants' position. In response to CA-IR-440, Applicants re-stated the objection to produce data for NextEra Energy affiliates outside of Hawaii that do not enter into Hawaii-related inter-affiliate transactions.

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56 *Id*. at 229.

57 *See* Applicants Exhibit-79 at 26-27.

Unfortunately, this response did not explain or define what would constitute a "Hawaii-related inter-affiliate transaction."

In responsive testimony, Mr. Sekimura explained that Applicants proposed to further revise Condition 15 to read: "Utility Corporation shall always maintain a complete set of their books of accounts and supporting records and provide reports concerning intercompany transactions for NextEra affiliates in the State of Hawai'i."[58] In response to CA-IR-441(a), the Applicants explained what would be provided in those "reports." In response to subparts (b), (c), (d) and (f) of CA-IR-441, Applicants also stated what the "reports" it offered to provide would not contain:

- No data supporting allocation factor inputs (e.g., direct measures and/or Massachusetts Formula) for all NextEra affiliates FPL has included in the development of said allocation factors. "The detailed information regarding the allocation of the cost drivers will be maintained at FPL as it contains confidential non-public information regarding affiliate financial results, projections and operations."

- No data supporting allocation factor inputs (e.g., direct measures and/or Massachusetts Formula) for any NextEra affiliates FPL has excluded from the development of said allocation factors. Applicants claim that data related to NextEra affiliates FPL has not included in the development of said allocation factors are not relevant to FPL nor the Hawaiian Electric Companies' cost of service. "With this reading, FPL will not agree to gather, aggregate, analyze and provide information that is not relevant to development of appropriate transaction billings and/or allocations. FPL generally allocates shared corporate costs to all

58 *See* Applicants Exhibit-79, at 27.

operating affiliates. To the extent a shared corporate service is not charged to an affiliate, it is because that affiliate is not receiving that service."

- No data explaining why FPL excluded certain NextEra affiliates from allocation factor development.

- No accounting and operational data for any excluded NextEra affiliates so that the Commission and the Consumer Advocate can independently modify the allocation factor inputs (e.g., direct measures and/or Massachusetts Formula) if exclusion is contested.

It is unclear whether the above affiliate data Applicants say will not be provided is limited merely to the offered "reports" or whether Applicants intended to further deny production of such data in response to information requests submitted in a rate case or other affiliate-related regulatory proceeding. If the Applicants' rebuttal testimony is silent on this matter or affirmatively states that such information will be contested if requested, the Commission should adopt the Consumer Advocate's "access" modification to Condition 15 in order to minimize litigation in future regulatory proceedings. After all, it is the Commission that should determine what information is needed and required for regulatory purposes, not the Applicants.

Q. PLEASE EXPLAIN THE DIFFERENCE CONCERNING CONDITION 16.

A. Mr. Hills' direct testimony discussed the Consumer Advocate's recommendation to retain Condition 16 in its original form,[59] rather than delete the condition entirely as initially proposed by Applicants.[60] Applicants now propose to only delete the first sentence of Condition 16 which states that NextEra "shall not sell or otherwise divest itself of any of the common stock of the Utility Corporation without the prior approval of the Commission." As set forth in Applicants Exhibit-86 at page 6, Applicants have acquiesced to retaining the language that a third-party purchaser of Hawaiian Electric Holdings would require Commission approval. In responsive testimony, Ms. Sekimura states:[61]

> Condition 16 (as modified by the Consumer Advocate) consists of two components. The first component provides that, "NextEra shall not sell or otherwise divest itself of any of the common stock of the Utility Corporation without prior approval of the Commission." Upon further review, this condition appears to extend beyond the requirements of HRS § 269-17.5 (which only requires Commission approval of a non-exempt transaction of 25% or more of the issued and outstanding voting stock). The Applicants object to the Consumer Advocate's proposed restriction on the grounds that it would unreasonably extend the existing statutory restriction – possibly to the detriment of shareholders.

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59 *See* CA Exhibit-7 at 66.

60 *See* Ms. Sekimura's Direct Testimony, Applicants Exhibit-28 at 32.

61 *See* Applicants Exhibit-79 at 27-28.

Applicants are again attempting to characterize the Consumer Advocate's proposed retention of original language from the 1982 Agreement as something new. It is the Applicants that are seeking to delete original language, which the Consumer Advocate proposes to retain.[62]

I am not an attorney, so I am unable to offer legal comment on Ms. Sekimura's contention. But, I do agree with the spirit of Mr. Hill's direct testimony. Even if the first sentence of Condition 16 is duplicative or arguably even more restrictive than statutory provisions requiring Commission approval prior to a common stock sale, there is no obvious detriment to any party by retaining Condition 16 in its entirety. If it is NextEra's intent to potentially "flip" up to 25% of its ownership in HEH, then NextEra should inform the Commission now that it does not intend to hold its full ownership interest beyond ten years and Applicants should provide a clearer and restated version of commitment 31 that was provided on Applicants Exhibit-37. If NextEra does not intend to parcel out its ownership stake in HEH, then the Commission's prior directives regarding holding companies should remain intact and the holding company governing conditions should be collected in one place.

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62 *See* CA Exhibit-19 at 6.

Interestingly, the responsive testimony of Applicants' witness Reed partially addresses unidentified intervenor ring fencing recommendations, as follows:[63]

> As discussed in my Direct Testimony, the commitments that have been made by NextEra Energy and the Hawaiian Electric Companies provide an appropriate level of financial protection for the Hawaiian Electric Companies and their customers, while preserving the benefits of strong ties between NextEra Energy and HEH. The concerns that often arise in other utility transactions, such as affiliation with companies that have lower debt ratings or the use of acquisition related debt, are not present here. Therefore, the ring fencing restrictions that would apply under those circumstances are not required here. Furthermore, NextEra Energy is committed to the regulated utility industry; it is not a financial firm that could be looking to "flip" its investment in Hawai'i after its value has been enhanced. In fact, NextEra Energy has also committed that it will not sell HEH or its electric utility subsidiaries for a period of at least 10 years post-closing, and any subsequent sale will be subject to the review and approval of the Commission as provided by law.
> [Emphasis Added]

This ring fencing argument "rings" a bit hollow in the context of Applicants' opposition to the first sentence of original Condition 16. Or, maybe NextEra is interested in being able to "flip" 24.99% of its ownership interest without Commission involvement, if it is successful in enhancing the value of HEH.

Based on the existing record, it is unclear why the Applicants find the common stock sale language to be offensive, but the third party acquisition language is now acceptable. The Consumer Advocate has identified no harm in retaining Condition 16 it its entirety so that the sale condition is explicitly clear.

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63 *See* Mr. Reed's Responsive Testimony, Applicants Exhibit-50 at 162-163. Also, *see* Applicants Exhibit-37 at 5, Commitment 31.

III. OTHER MATTERS.

Q. IN RESPONSIVE TESTIMONY, MR. REED RESPONDS TO A QUESTION CLAIMING THAT "CERTAIN PARTIES APPEAR TO BELIEVE THAT NEXTERA ENERGY PROVIDES ITS AFFILIATE SERVICES THROUGH A SERVICE COMPANY."[64] FOOTNOTE 208 THEN CITES TO THE DIRECT TESTIMONY OF YOU AND MR. NISHINA AS THE BASIS FOR THE QUESTION.[65] IS MR. REED CORRECT THAT THE CONSUMER ADVOCATE BELIEVES NEXTERA ENERGY PROVIDES AFFILIATE SERVICES THROUGH A SERVICE COMPANY?

A. No, Mr. Reed is mistaken. Rather than focus his 273 pages of responsive testimony to the multitude of issues raised by the parties, Mr. Reed for some reason chose to create a non-issue that is unsupported by the record. Neither my direct testimony nor that of Mr. Nishina employ the phrase "service company" or variations thereof, other than as part of the name of specific utility companies.

To clarify Mr. Reed's concern, CA-IR-445 sought a pinpoint reference to the specific pages and lines of the testimony filed by the Consumer Advocate or any witness in this proceeding that "appear to believe that NextEra Energy provides its affiliate services through a service company." The response to CA-IR-445 did not

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64 *See* Mr. Reed's Responsive Testimony, Applicants Exhibit-50 at 217.

65 *See* Applicants Exhibit-50 at 217 for footnote 208, which reads: "Consumer Advocate Exhibit-16 at 10-14; Consumer Advocate Exhibit-1 at 33-35."

provide the requested "pinpoint reference," but instead indicated that citations "to CA Exhibit-1 and CA Exhibit-16 were made to tie this response to the discussion of affiliate transactions in the Consumer Advocate's testimony." According to this response, Mr. Reed was "unclear" whether the Consumer Advocate understood how affiliate services were being provided by NextEra and its affiliates, referring to "numerous [Consumer Advocate] references to corporate services being provided to the Hawaiian Electric Companies by unregulated affiliates."

A search of the Consumer Advocate's direct testimony resulted in no use of the phrase "service company" and four uses of the phrase "corporate services":

- Mr. Carver clearly states: "The Commission should not rely on periodic work done by other regulators to conclude that the costs underlying the corporate services performed by affiliate FPL for the NextEra family of companies, including the HECO Companies post-merger, are properly quantified and included in Hawaii electric rates."[66] [Emphasis Added]

- Mr. Carver quotes from the Applicants' response to CA-IR-125: "These traditional corporate services are recurring and are therefore provided and billed to FPL affiliates through its affiliate management fee ("AMF")." [67] [Emphasis Added]

- Mr. Carver also states: "According to the response to CA-IR-125, the specific services and amounts to be billed to the HECO Companies for such services are not known at this time and are dependent on the ultimate cost of the service and

66 *See* CA Exhibit-16 at 10, lines 12-15.

67 *See* CA Exhibit-16 at 31, lines 14-16.

the relative results of the cost drivers used to bill those aggregate corporate services."[68] [Emphasis Added]

- Mr. Carver again quotes from the Applicants' response to CA-IR-125: "The specific services and amounts to be billed to the Companies for such services are not known at this time and would be dependent on the ultimate cost of the service and the relative results of the cost drivers used to bill those aggregate corporate services."[69] [Emphasis Added]

The source of Mr. Reed's apparent confusion or misunderstanding of the Consumer Advocate's appreciation that it is FPL that provides corporate services, not a separate service company entity, is unidentifiable from either CA Exhibit-1 or CA Exhibit-16.

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68 *See* CA Exhibit-16 at 33, lines 16-19.

69 *See* CA Exhibit-16 at 35, lines 13-17.

IV. CONCLUSION.

Q. AS A RESULT OF YOUR REVIEW OF THE APPLICANTS' RESPONSIVE TESTIMONY AND RESPONSES TO RELATED INFORMATION REQUESTS, HAVE YOU REVISED YOUR FINDINGS AND OPINIONS CONTAINED IN YOUR DIRECT TESTIMONY AS TO WHETHER NEE IS FIT, WILLING AND ABLE TO PROVIDE SAFE, ADEQUATE AND RELIABLE ELECTRIC SERVICE AT THE LOWEST REASONABLE COST IN DETERMINING WHETHER THE PROPOSED TRANSACTION IS IN THE PUBLIC INTEREST?

A. No. As stated in my direct testimony,[70] the testimonies of other Consumer Advocate witnesses have addressed a variety of concerns with the Proposed Transaction in addition to those that I discuss. The conditions I originally proposed and continue to support serve to adequately mitigate my stated concerns with respect to affiliate transactions and regulatory issues.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes.

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70 *See* CA Exhibit-16 at 69.

Updated Comparison of Applicants and Consumer Advocate Modifications to the 1982 Agreement Conditions

	Applicants' Proposed Modifications (Applicants' Exhibit-8 & Exhibit-31)	Applicants' Updated Modifications (Applicants' Exhibit-86)	CA Recommendations (CA Exhibit-19)
1	NextEra Energy, Inc.~~Hawaiian Electric Industries, Inc. ("HEI")~~, its successors and assigns, including all subsidiaries in which NextEra Energy~~Hawaiian Electric Industries~~~~Hawaiian Electric Industries~~, Inc., or its subsidiaries have a substantial interest, now existing or to be acquired or created in the future, hereinafter collectively called "NextEra~~Industries~~ ~~Industries~~", shall furnish to the Public Utilities Commission, State of Hawai'i, hereinafter called "Commission", any and all records, books or documents of every nature and kind when requested in writing by the Commission. The information requested of NextEra~~Industries~~ by the Commission shall relate to information that is necessary to fulfill the statutory responsibilities of the Commission with respect to the "Utility Corporation" (as that term is defined in Condition No. 3), and be sought from entities within NextEra that provide services chargeable to the Utility Corporation. NextEra~~Industries~~ shall also provide the same information requested by and furnished to the Commission to the ~~Public Utilities~~ ~~Public Utilities~~ Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, State of Hawai'i ("Consumer Advocate") herein. The Consumer Advocate shall utilize the procedures set forth in Section 269-54(d), Hawai'i Revised Statutes, when it requests such information from NextEra~~Industries~~ ~~Industries~~.	NextEra Energy, Inc.~~Hawaiian Electric Industries, Inc. ("HEI")~~, its successors and assigns, including all subsidiaries in which NextEra Energy~~Hawaiian Electric Industries~~~~Hawaiian Electric Industries~~, Inc., or its subsidiaries have a substantial interest, now existing or to be acquired or created in the future, hereinafter collectively called "NextEra~~Industries~~", shall furnish to the Public Utilities Commission, State of Hawai'i, hereinafter called "Commission", any and all records, books or documents of every nature and kind when requested in writing by the Commission. The information requested of NextEra~~Industries~~ by the Commission shall relate to information that is necessary to fulfill the statutory responsibilities of the Commission. NextEra~~Industries~~ shall also provide the same information requested by and furnished to the Commission to the ~~Public Utilities~~ Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, State of Hawai'i ("Consumer Advocate") herein. The Consumer Advocate shall utilize the procedures set forth in Section 269-54(d), Hawai'i Revised Statutes, when it requests such information from NextEra~~Industries~~.	NextEra Energy, Inc.~~Hawaiian Electric Industries, Inc. ("HEI")~~, its successors and assigns, including all subsidiaries in which NextEra Energy~~Hawaiian Electric Industries~~, Inc., or its subsidiaries have a substantial interest, now existing or to be acquired or created in the future, hereinafter collectively called "NextEra~~Industries~~", shall furnish to the Public Utilities Commission, State of Hawai'i, hereinafter called "Commission", any and all records, books or documents of every nature and kind when requested in writing by the Commission. The information requested of NextEra~~Industries~~ by the Commission shall relate to information that is necessary to fulfill the statutory responsibilities of the Commission~~ with respect to the "Utility Corporation" (as that term is defined in Condition No. 3), and be sought from entities within NextEra that provide services chargeable to the Utility Corporation~~. NextEra~~Industries~~ shall also provide the same information requested by and furnished to the Commission to the ~~Public Utilities~~ Division of Consumer Advocacy, Department of Commerce and Consumer Affairs, State of Hawai'i ("Consumer Advocate") herein. The Consumer Advocate shall utilize the procedures set forth in Section 269-54(d), Hawai'i Revised Statutes, when it requests such information from NextEra~~Industries~~.
2	NextEra~~Industries~~ ~~Industries~~, when requested in writing or in open hearing, shall voluntarily have any~~ y~~ employee, officer, director, ~~or~~ ~~or~~ agent or other representative ~~of Industries~~ ~~of Industries~~ appear before the Commission for the purpose of testifying before the	NextEra~~Industries~~, when requested in writing or in open hearing, shall voluntarily have any~~ y~~ employee, officer, director, or agent or other representative ~~of Industries~~ appear before the Commission for the purpose of testifying	NextEra~~Industries~~, when requested in writing or in open hearing, shall voluntarily have any employee, officer, director, ~~or~~ agent or other representative ~~of Industries~~ appear before the Commission for the purpose of testifying before the Commission, as necessary to fulfill

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	Commission, as necessary to fulfill the statutory responsibilities of the Commission with respect to the Utility Corporation.	before the Commission, as necessary to fulfill the statutory responsibilities of the Commission.	the statutory responsibilities of the Commission ~~with respect to the Utility Corporation~~.
3	The Commission shall have the right to investigate any matter, activity or transaction between Hawaiian Electric Company, Inc., and its subsidiaries, hereinafter collectively called "Utility Corporation", and any entities within NextEra~~Industries~~ that provide services chargeable to the Utility Corporation, as may be necessary to fulfill the statutory responsibilities of the Commission with respect to the Utility Corporation. For purposes of investigation, the Commission shall have the right to enter the premises of Hawaiian Electric Holdings~~Industries~~ ~~Industries~~ during normal working hours and to review any and all records, books or documents of every nature and kind which relate to the investigation or inquiry.	The Commission shall have the right to investigate any matter, activity or transaction between Hawaiian Electric Company, Inc., and its subsidiaries, hereinafter collectively called "Utility Corporation", and any entities within NextEra~~Industries~~ that provide services chargeable to the Utility Corporation, as may be necessary to fulfill the statutory responsibilities of the Commission. For purposes of investigation, the Commission shall have the right to enter the premises of Hawaiian Electric Holdings and/or other NextEra affiliates that provide services chargeable to the Utility Corporation, as necessary,~~Industries~~ during normal working hours and to review any and all records, books or documents of every nature and kind which relate to the investigation or inquiry.	The Commission shall have the right to investigate any matter, activity or transaction between Hawaiian Electric Company, Inc., and its subsidiaries, hereinafter collectively called "Utility Corporation", and any entities within NextEra~~Industries~~ that provide services chargeable to or impact shared services costs allocable to the Utility Corporation, as may be necessary to fulfill the statutory responsibilities of the Commission ~~with respect to the Utility Corporation~~. For purposes of investigation, the Commission shall have the right to enter the premises of Hawaiian Electric Holdings~~Industries~~ and/or other NextEra affiliates, as necessary, during normal working hours and to review any and all records, books or documents of every nature and kind which relate to the investigation or inquiry.
4	Hawaiian Electric Holdings~~Industries~~~~Industries~~ shall furnish to the Commission and the Consumer Advocate the following: (1) quarterly and annual financial statements in reasonable detail; (2) annual consolidated financial statements, in reasonable detail, certified by independent certified public accountants; and (3) consolidating statements involved in the preparation of the financial statements together with an explanation of the nature of intercompany transactions and the basis of any allocations made.	Hawaiian Electric Holdings~~Industries~~ shall furnish to the Commission and the Consumer Advocate the following: (1) quarterly and annual financial statements in reasonable detail; (2) annual consolidated financial statements, in reasonable detail, certified by independent certified public accountants; and (3) consolidating statements involved in the preparation of the financial statements together with an explanation of the nature of intercompany transactions and the basis of any allocations made.	Hawaiian Electric Holdings~~Industries~~ shall furnish to the Commission and the Consumer Advocate the following: (1) quarterly and annual financial statements in reasonable detail; (2) annual consolidated financial statements, in reasonable detail, certified by independent certified public accountants; and (3) consolidating statements involved in the preparation of the financial statements together with an explanation of the nature of intercompany transactions and the basis of any allocations made.

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5	The Commission and the Consumer Advocate shall have the right to review any intercompany charges and allocations of common expenses between the Utility Corporation and NextEra~~Industries~~ ~~Industries~~. Such allocations shall include, but not be limited to: a) Salaries of personnel who perform duties for the utility as well as an affiliate; and other related expenses such as payroll taxes, pension and group insurance costs, travel and reimbursable expenses. b) Common expenses for facilities, including rent, taxes, depreciation and insurance. c) Expenditures for outside services such as legal counsel, auditing, advertising and public relations. d) Construction costs, including equipment and materials expended thereon. Any intercompany charges and allocations not deemed proper for ratemaking and quality of service purposes may be disregarded by the Commission in determining allowable expenses, revenues, rate base and rate of return for the Utility Corporation.	The Commission and the Consumer Advocate shall have the right to review any intercompany charges and allocations of common expenses between the Utility Corporation and NextEra Energy Inc. and each affiliate of NextEra~~Industries~~. Such allocations shall include, but not be limited to: a) Salaries of personnel who perform duties for the utility as well as an affiliate; and other related expenses such as payroll taxes, pension and group insurance costs, travel and reimbursable expenses. b) Common expenses for facilities, including rent, taxes, depreciation and insurance. c) Expenditures for outside services such as legal counsel, auditing, advertising and public relations. d) Construction costs, including equipment and materials expended thereon. Any intercompany charges and allocations not deemed proper for ratemaking and quality of service purposes may be disregarded by the Commission in determining allowable expenses, revenues, rate base and rate of return for the Utility Corporation.	The Commission and the Consumer Advocate shall have the right to review any intercompany charges and allocations of common expenses between the Utility Corporation and NextEra~~Industries~~ Energy, Inc. and each affiliate of NextEra. Such allocations shall include, but not be limited to: a) Salaries of personnel who perform duties for the utility as well as an affiliate; and other related expenses such as payroll taxes, pension and group insurance costs, travel and reimbursable expenses. b) Common expenses for facilities, including rent, taxes, depreciation and insurance. c) Expenditures for outside services such as legal counsel, auditing, advertising and public relations. d) Construction costs, including equipment and materials expended thereon. Any intercompany charges and allocations not deemed proper for ratemaking and quality of service purposes may be disregarded by the Commission in determining allowable expenses, revenues, rate base and rate of return for the Utility Corporation.
6	Any plant or property carried on the books of the Utility Corporation shall be subject to review by the Commission for determination of its qualification as being “used or useful” in utility operation. The Commission may exclude from the rate base any assets determined to be non-utility in nature, so long as any related	Any plant or property carried on the books of the Utility Corporation shall be subject to review by the Commission for determination of its qualification as being “used or useful” in utility operation. The Commission may exclude from the rate base any assets determined to be non-	Any plant or property carried on the books of the Utility Corporation shall be subject to review by the Commission for determination of its qualification as being “used or useful” in utility operation. The Commission may exclude from the rate base any assets determined to be non-utility in nature, so long

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	income and expenses are excluded from earnings in determining rate of return.	utility in nature, so long as any related income and expenses are excluded from earnings in determining rate of return.	as any related income and expenses are excluded from earnings in determining rate of return.
7	The Commission shall continue to have full authority over the Utility Corporation's issuance of securities. Normally the Commission will not approve the issuance of any securities, which would result in long-term debt being more than 60%, or common equity being less than 35% of the Utility Corporation's capitalization. For this purpose, short-term bank loans utilized for interim financing of capital projects shall not be included as part of capitalization. The capitalization ratio restrictions in this paragraph shall in no way be construed to mean that the Commission has relinquished its right to review at any time the Utility Corporation's financial policies.	The Commission shall continue to have full authority over the Utility Corporation's issuance of securities. Normally the Commission will not approve the issuance of any securities, which would result in long-term debt being more than 60%, or common equity being less than 35% of the Utility Corporation's capitalization. For this purpose, short-term bank loans utilized for interim financing of capital projects shall not be included as part of capitalization. The capitalization ratio restrictions in this paragraph shall in no way be construed to mean that the Commission has relinquished its right to review at any time the Utility Corporation's financial policies.	The Commission shall continue to have full authority over the Utility Corporation's issuance of securities. Normally the Commission will not approve the issuance of any securities, which would result in long-term debt being more than 60%, or common equity being less than 35% of the Utility Corporation's capitalization. For this purpose, short-term bank loans utilized for interim financing of capital projects shall not be included as part of capitalization. The capitalization ratio restrictions in this paragraph shall in no way be construed to mean that the Commission has relinquished its right to review at any time the Utility Corporation's financial policies.
8	The Utility Corporation shall obtain its own interim and long-term borrowing as in the pre-corporate-restructuring period. Any cash advances made to the Utility Corporation by NextEra~~Industries~~ shall bear interest at a rate not higher than that currently being paid on the Utility Corporation's principal bank borrowings.	The Utility Corporation shall obtain its own interim and long-term borrowing ~~as in the pre-corporate-restructuring period~~. Any cash advances made to the Utility Corporation by NextEra~~Industries~~ shall bear interest at a rate not higher than that currently being paid on the Utility Corporation's principal bank borrowings.	The Utility Corporation shall obtain its own interim and long-term borrowing ~~as in the precorporate-restructuring period~~. Any cash advances made to the Utility Corporation by NextEra~~Industries~~ shall bear interest at a rate not higher than that currently being paid on the Utility Corporation's principal bank borrowings.
9	The Utility Corporation shall not loan directly or indirectly any funds to NextEra~~Industries~~ without prior Commission approval. Any loans made hereunder shall be evidenced by a Note of Indebtedness specifying principal amount, interest rate and maturity date. Such loans shall bear interest at a rate not less than that paid by NextEra~~Industries~~ on its principal bank loans.	The Utility Corporation shall not loan directly or indirectly any funds to NextEra~~Industries~~ without prior Commission approval. Any loans made hereunder shall be evidenced by a Note of Indebtedness specifying principal amount, interest rate and maturity date. Such loans shall bear interest at a rate not less than that paid by NextEra~~Industries~~ on its principal bank loans.	The Utility Corporation shall not loan directly or indirectly any funds to NextEra~~Industries~~ without prior Commission approval. Any loans made hereunder shall be evidenced by a Note of Indebtedness specifying principal amount, interest rate and maturity date. Such loans shall bear interest at a rate not less than that paid by NextEra~~Industries~~ on its principal bank loans.

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10	The Utility Corporation shall not pay cash dividends to its stockholders in excess of 80% of its earnings available for payment of dividends in its current fiscal year and preceding five years less the amount of dividends paid by the Utility Corporation during such period when the Utility Corporation consolidated common equity is less than 35% of total capital. In the event of a decrease in earnings, judged by the board of directors of the Utility Corporation to be temporary in nature, dividend payments may be continued during the balance of its fiscal year at current rates. In the succeeding year, however, the Utility Corporation shall follow the restrictions on dividend payments set forth in this paragraph unless otherwise permitted by the Commission. The restriction in this paragraph shall in no way be construed to mean that the Commission has relinquished its right to review at any time the Utility Corporation's dividend policy.	The Utility Corporation shall not pay cash dividends to its stockholders in excess of 80% of its earnings available for payment of dividends in its current fiscal year and preceding five years less the amount of dividends paid by the Utility Corporation during such period when the Utility Corporation consolidated common equity is less than 35% of total capital. In the event of a decrease in earnings, judged by the board of directors of the Utility Corporation to be temporary in nature, dividend payments may be continued during the balance of its fiscal year at current rates. In the succeeding year, however, the Utility Corporation shall follow the restrictions on dividend payments set forth in this paragraph unless otherwise permitted by the Commission. The restriction in this paragraph shall in no way be construed to mean that the Commission has relinquished its right to review at any time the Utility Corporation's dividend policy.	The Utility Corporation shall not pay cash dividends to its stockholders in excess of 80% of its earnings available for payment of dividends in its current fiscal year and preceding five years less the amount of dividends paid by the Utility Corporation during such period when the Utility Corporation consolidated common equity is less than 35% of total capital. In the event of a decrease in earnings, judged by the board of directors of the Utility Corporation to be temporary in nature, dividend payments may be continued during the balance of its fiscal year at current rates. In the succeeding year, however, the Utility Corporation shall follow the restrictions on dividend payments set forth in this paragraph unless otherwise permitted by the Commission. The restriction in this paragraph shall in no way be construed to mean that the Commission has relinquished its right to review at any time the Utility Corporation's dividend policy.
11	The Utility Corporation shall not redeem any of its common stock without prior approval of the Commission.	The Utility Corporation shall not redeem any of its common stock without prior approval of the Commission.	The Utility Corporation shall not redeem any of its common stock without prior approval of the Commission.
12	In any transactions with affiliates, the Utility Corporation and the affiliates shall deal fairly with each other, and where appropriate, NextEra~~Industries~~ shall retain and rely upon the advice of independent experts to assure such fairness.	In any transactions with affiliates, the Utility Corporation and the affiliates shall deal fairly with each other, and where appropriate, NextEra~~Industries~~ shall retain and rely upon the advice of independent experts to assure such fairness.	In any transactions with affiliates, the Utility Corporation and the affiliates shall deal fairly with each other, and where appropriate, NextEra~~Industries~~ shall retain and rely upon the advice of independent experts to assure such fairness.
13	~~The Utility Corporation shall not transfer any of its property which is or was in the rate base nor assume any liabilities of Industries, directly or indirectly, without the prior approval of the Commission. The determination of the transfer~~	~~The Utility Corporation shall not transfer any of its property which is or was in the rate base nor assume any liabilities of Industries, directly or indirectly, without the prior approval of the Commission.~~	The Utility Corporation shall not transfer any of its property which is or was in ~~the~~ rate base to NextEra nor assume any liabilities of NextEra~~Industries~~, directly or indirectly, without the prior approval of the Commission.

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	~~value and the accounting and ratemaking treatment thereof shall be determined by the Commission at the time of approval of such transfer.~~The Utility Corporation shall not transfer any of its property which is or was in the rate base nor assume any liabilities of Industries, directly or indirectly, without the prior approval of the Commission. The determination of the transfer value and the accounting and ratemaking treatment thereof shall be determined by the Commission at the time of approval of such transfer.	~~The determination of the transfer value and the accounting and ratemaking treatment thereof shall be determined by the Commission at the time of approval of such transfer.~~	The determination of the transfer value and the accounting and ratemaking treatment thereof shall be determined by the Commission at the time of approval of such transfer.
14	The accounts, accounting methods and procedures of NextEra~~Industries~~ shall be maintained in such manner that they will accurately reflect, under generally accepted accounting principles, the operations, assets and liabilities and the overall financial condition of the Utility Corporation. The Utility Corporation shall continue to comply in all respects with the procedures established by the Commission pursuant to the Uniform System of Accounts.	The accounts, accounting methods and procedures of NextEra~~Industries~~ shall be maintained in such manner that they will accurately reflect, under generally accepted accounting principles and regulatory accounting requirements, the operations, assets and liabilities and the overall financial condition of the Utility Corporation. The Utility Corporation shall continue to comply in all respects with the procedures established by the Commission pursuant to the Uniform System of Accounts.	The accounts, accounting methods and procedures of NextEra~~Industries~~ shall be maintained in such manner that they will accurately reflect, under generally accepted accounting principles and regulatory accounting requirements, the operations, assets and liabilities and the overall financial condition of the Utility Corporation. The Utility Corporation shall continue to comply in all respects with the procedures established by the Commission pursuant to the Uniform System of Accounts.
15	~~Industries~~~~Industries~~Utility Corporation shall always maintain a complete set of its~~their~~ books of accounts and supporting records in the State of Hawai'i.	~~Industries~~~~Industries~~Utility Corporation shall always maintain a complete set of its~~their~~ books of accounts and supporting records in the State of Hawai'i.	~~Industries~~Utility Corporation shall always maintain a complete set of its~~their~~ books of accounts and supporting records and provide access to the required books and records of NextEra affiliates in the State of Hawai'i.
16	~~Industries shall not sell or otherwise divest itself of any of the common stock of the Utility Corporation without the prior approval of the Commission. The acquisition of Hawaiian Electric Industries, Inc., by a third party, whether by purchase, merger, consolidation or otherwise, shall require prior written approval of the Commission.~~Industries shall not sell or otherwise divest itself of any of the common stock of the Utility Corporation without the prior	~~Industries shall not sell or otherwise divest itself of any of the common stock of the Utility Corporation without the prior approval of the Commission.~~ The acquisition of Hawaiian Electric Holdings~~Industries, Inc.~~, by a third party, whether by purchase, merger, consolidation or otherwise, shall require prior written approval of the Commission.	NextEra~~Industries~~ shall not sell or otherwise divest itself of any of the common stock of the Utility Corporation without the prior approval of the Commission. The acquisition of Hawaiian Electric Holdings~~Industries, Inc.~~, by a third party, whether by purchase, merger, consolidation or otherwise, shall require prior written approval of the Commission.

	~~approval of the Commission. The acquisition of Hawaiian Electric Industries, Inc., by a third party, whether by purchase, merger, consolidation or otherwise, shall require prior written approval of the Commission.~~		
17	In any of the foregoing matters, the information obtained by the Commission and its Staff and/or the Consumer Advocate and its Staff shall be considered as having been obtained for the sole purpose of properly exercising the Commission's jurisdiction over the Utility Corporation. Information relating to the assets, liabilities, income and expenses of NextEra~~Industries~~ shall not be deemed as public record, as that term is defined in Hawai'i Revised Statutes, Section 92-50, and shall not be open to public inquiry without the express written permission of the management of ~~NextEraHawaiian Electric Industries, Inc.Hawaiian Electric Industries, Inc.~~, except in cases where they are material or relevant in a proceeding before the Commission, or before the courts; said determination of materialness or relevance to be determined by the presiding body.	In any of the foregoing matters, the information obtained by the Commission and its Staff and/or the Consumer Advocate and its Staff shall be considered as having been obtained for the sole purpose of properly exercising the Commission's jurisdiction over the Utility Corporation. Information relating to the assets, liabilities, income and expenses of NextEra~~Industries~~ shall not be deemed as public record, as that term is defined in Hawai'i Revised Statutes, Section 92-50, and shall not be open to public inquiry without the express written permission of the management of NextEra~~Hawaiian Electric Industries, Inc.~~, except in cases where they are material or relevant in a proceeding before the Commission, or before the courts; said determination of materialness or relevance to be determined by the presiding body.	In any of the foregoing matters, the information obtained by the Commission and its Staff and/or the Consumer Advocate and its Staff shall be considered as having been obtained for the sole purpose of properly exercising the Commission's jurisdiction over the Utility Corporation. Information relating to the assets, liabilities, income and expenses of NextEra~~Industries~~ shall not be deemed as public record, as that term is defined in Hawai'i Revised Statutes, Section 92-50, and shall not be open to public inquiry without the express written permission of the management of ~~NextEraHawaiian Electric Industries, Inc.~~, except in cases where they are material or relevant in a proceeding before the Commission, or before the courts; said determination of materialness or relevance to be determined by the presiding body.
18	If at any time, the Commission finds that the Utility Corporation or NextEra~~Industries~~ is not complying in good faith with the provisions of this order, the following procedures will be instituted: a) The Utility Corporation or NextEra~~Industries~~ or both shall be notified in writing of the action, circumstance or condition which requires correction and the measures necessary to rectify the situation. b) NextEra~~Industries~~ shall have a minimum of ten days, unless extended	If at any time, the Commission finds that the Utility Corporation or NextEra~~Industries~~ is not complying in good faith with the provisions of this order, the following procedures will be instituted: a) The Utility Corporation or NextEra~~Industries~~ or both shall be notified in writing of the action, circumstance or condition which requires correction and the measures necessary to rectify the situation.	If at any time, the Commission finds that the Utility Corporation or NextEra~~Industries~~ is not complying in good faith with the provisions of this order, the following procedures will be instituted: a) The Utility Corporation or NextEra~~Industries~~ or both shall be notified in writing of the action, circumstance or condition which requires correction and the measures necessary to rectify the situation. b) NextEra~~Industries~~ shall have a minimum of ten days, unless extended further by

	further by the Commission, in which to undertake the corrective measures. c) If NextEra~~Industries~~ fails to undertake a correction of the breach of the Agreement, the Consumer Advocate may initiate a request for an order to show cause from the Commission or the Commission may institute a show cause proceeding. d) If NextEra~~Industries~~ fails, after hearing and a decision rendered, to comply with the Commission's order to rectify the breach of this Agreement, the Commission may take appropriate action to assure compliance with this Agreement, including, without limitation, issuing an order requiring NextEra~~Industries~~ (or its successor as parent company of the Utility Corporation) to divest itself of its ownership of the Utility Corporation's common stock under terms and conditions which will take into consideration the best interests of the Utility Corporation's customers, employees and stockholders.	b) NextEra~~Industries~~ shall have a minimum of ten days, unless extended further by the Commission, in which to undertake the corrective measures. c) If NextEra~~Industries~~ fails to undertake a correction of the breach of the Agreement, the Consumer Advocate may initiate a request for an order to show cause from the Commission or the Commission may institute a show cause proceeding. d) If NextEra~~Industries~~ fails, after hearing and a decision rendered, to comply with the Commission's order to rectify the breach of this Agreement, the Commission may take appropriate action to assure compliance with this Agreement, including, without limitation, issuing an order requiring NextEra~~Industries~~ (or its successor as parent company of the Utility Corporation) to divest itself of its ownership of the Utility Corporation's common stock under terms and conditions which will take into consideration the best interests of the Utility Corporation's customers employees and stockholders.	the Commission, in which to undertake the corrective measures. c) If NextEra~~Industries~~ fails to undertake a correction of the breach of the Agreement, the Consumer Advocate may initiate a request for an order to show cause from the Commission or the Commission may institute a show cause proceeding. d) If NextEra~~Industries~~ fails, after hearing and a decision rendered, to comply with the Commission's order to rectify the breach of this Agreement, the Commission may take appropriate action to assure compliance with this Agreement, including, without limitation, issuing an order requiring NextEra~~Industries~~ (or its successor as parent company of the Utility Corporation) to divest itself of its ownership of the Utility Corporation's common stock under terms and conditions which will take into consideration the best interests of the Utility Corporation's customers, employees and stockholders.
19	~~Industries represents that the proposed merger and corporate restructuring are designed for the following purposes:~~ ~~a) To separate the operations now conducted by Hawaiian Electric Company, Inc. from future diversified activities which will be nonutility in nature. Such diversified activities, if~~	NextEra~~Industries~~ represents that the proposed merger and corporate restructuring are designed for the following purposes: a) The Agreement and Plan of Merger was entered into for the purpose of transferring control of the Hawaiian Electric Companies from Hawaiian	NextEra~~Industries~~ represents that the proposed merger and corporate restructuring are designed for the following purposes: a) The Agreement and Plan of Merger was entered into for the purpose of transferring control of the Hawaiian Electric Companies from Hawaiian Electric Industries, Inc. ("HEI") to

	~~conducted by the present corporation, either directly or through a subsidiary, could involve the Utility Corporation's assets and credit. If undertaken by an affiliate, there would be no involvement of the utility, thus permitting the utility's activities to be confined to an area more clearly delineated for regulation by the Commission.~~ ~~b) To facilitate vertical integration which would be accomplished by entry into alternate energy business by non-regulated affiliates of the Utility Corporation which could supply energy to the Utility Corporation.~~ ~~c) To provide a means of assisting the efforts to enhance commercialization of alternate energy technologies.~~ ~~d) To allow greater flexibility in the financing of certain activities in the alternate energy and other fields because the restrictive covenants in various instruments under the first mortgage bonds and other securities of the Utility Corporation would not apply.~~ ~~Industries represents that the proposed merger and corporate restructuring are designed for the following purposes:~~ ~~a) To separate the operations now conducted by Hawaiian Electric Company, Inc. from future diversified activities which will be nonutility in nature. Such diversified activities, if conducted by the present corporation, either directly or through a subsidiary, could involve the Utility Corporation's assets and credit. If undertaken by an affiliate, there would be no involvement of the utility, thus permitting the utility's activities to be confined to an area more~~	Electric Industries, Inc. ("HEI") to "Hawaiian Electric Holdings", a wholly owned subsidiary of NextEra Energy.~~To separate the operations now conducted by Hawaiian Electric Company, Inc. from future diversified activities which will be non-utility in nature. Such diversified activities, if conducted by the present corporation, either directly or through a subsidiary, could involve the Utility Corporation's assets and credit. If undertaken by an affiliate, there would be no involvement of the utility, thus permitting the utility's activities to be confined to an area more clearly delineated for regulation by the Commission.~~ b) The Proposed Change of Control is expected to improve the financial status of the Hawaiian Electric Companies, result in lower costs and customer savings, strengthen and accelerate the Hawaiian Electric Companies' clean energy plans and transformation, and enhance the Hawaiian Electric Companies' ability to continue providing safe and reliable service to their customers.~~To facilitate vertical integration which would be accomplished by entry into alternate energy business by non-regulated affiliates of the Utility Corporation which could supply energy to the Utility Corporation.~~ c) By combining with NextEra Energy, a national leader in clean energy, the Hawaiian Electric Companies	"Hawaiian Electric Holdings," a wholly owned subsidiary of NextEra Energy.~~To separate the operations now conducted by Hawaiian Electric Company, Inc. from future diversified activities which will be nonutility in nature. Such diversified activities, if conducted by the present corporation, either directly or through a subsidiary, could involve the Utility Corporation's assets and credit. If undertaken by an affiliate, there would be no involvement of the utility, thus permitting the utility's activities to be confined to an area more clearly delineated for regulation by the Commission.~~ b) The Proposed Change of Control is expected to improve the financial status of the Hawaiian Electric Companies, result in lower costs and customer savings, strengthen and accelerate the Hawaiian Electric Companies' clean energy plans and transformation, and enhance the Hawaiian Electric Companies' ability to continue providing safe and reliable service to their customers. ~~To facilitate vertical integration which would be accomplished by entry into alternate energy business by non-regulated affiliates of the Utility Corporation which could supply energy to the Utility Corporation.~~ c) By combining with NextEra Energy, a national leader in clean energy, the Hawaiian Electric Companies can move faster to accomplish the more affordable, clean energy future that the companies are working hard to achieve.~~To provide a means of~~

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	~~clearly delineated for regulation by the Commission.~~ ~~b) To facilitate vertical integration which would be accomplished by entry into alternate energy business by non-regulated affiliates of the Utility Corporation which could supply energy to the Utility Corporation.~~ ~~c) To provide a means of assisting the efforts to enhance commercialization of alternate energy technologies.~~ ~~d) To allow greater flexibility in the financing of certain activities in the alternate energy and other fields because the restrictive covenants in various instruments under the first mortgage bonds and other securities of the Utility Corporation would not apply.~~	can move faster to accomplish the more affordable, clean energy future that the companies are working hard to achieve.~~To provide a means of assisting the efforts to enhance commercialization of alternate energy technologies.~~ ~~d) To allow greater flexibility in the financing of certain activities in the alternate energy and other fields because the restrictive covenants in various instruments under the first mortgage bonds and other securities of the Utility Corporation would not apply.~~	~~assisting the efforts to enhance commercialization of alternate energy technologies.~~ ~~d) To allow greater flexibility in the financing of certain activities in the alternate energy and other fields because the restrictive covenants in various instruments under the first mortgage bonds and other securities of the Utility Corporation would not apply.~~
20	In construing or interpreting this document, the construction or interpretation which most favors the regulation and control over the Utility Corporation shall be applied.	In construing or interpreting this document, the construction or interpretation which most favors the regulation and control over the Utility Corporation shall be applied.	In construing or interpreting this document, the construction or interpretation which most favors the regulation and control over the Utility Corporation shall be applied.
21	For good cause shown, the parties to this Agreement or the Consumer Advocate may request that this Agreement be amended in whole or in part, but this Agreement may not be amended without mutual consent of the parties to the Agreement.	For good cause shown, the parties to this Agreement or the Consumer Advocate may request that this Agreement be amended in whole or in part, but this Agreement may not be amended without mutual consent of the parties to the Agreement.	For good cause shown, the parties to this Agreement or the Consumer Advocate may request that this Agreement be amended in whole or in part, but this Agreement may not be amended without mutual consent of the parties to the Agreement.
22	NextEra~~Industries~~ agrees that this Agreement shall be binding on its successors and assigns.	NextEra~~Industries~~ agrees that this Agreement shall be binding on its successors and assigns.	NextEra~~Industries~~ agrees that this Agreement shall be binding on its successors and assigns.
23	All papers to be served by either party regarding this Agreement shall utilize the procedures outlined in Section 2-3 of the Rules of Practice and Procedure of the Commission.	All papers to be served by either party regarding this Agreement shall utilize the procedures outlined in Section 2-3 of the Rules of Practice and Procedure of the Commission.	All papers to be served by either party regarding this Agreement shall utilize the procedures outlined in Section 2-3 of the Rules of Practice and Procedure of the Commission.

24	This Agreement shall be governed by the laws of the State of Hawai'i and of the United States of America.	This Agreement shall be governed by the laws of the State of Hawai'i and of the United States of America.	This Agreement shall be governed by the laws of the State of Hawai'i and of the United States of America.

CA-EXHIBIT-32
DOCKET NO. 2015-0022

REBUTTAL TESTIMONY

OF

MAXIMILIAN P. CHANG

ON BEHALF OF
THE DIVISION OF CONSUMER ADVOCACY

SUBJECT: **INVESTMENT FUND, WORKFORCE DEVELOPMENT, RELIABILITY, NUCLEAR DECOMMISSIONING, COMPETITION, AND SMART GRID ISSUES RELATED TO THE PROPOSED MERGER BETWEEN HAWAIIAN ELECTRIC INDUSTRIES AND NEXTERA ENERGY**

CA-EXHIBIT-32
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REBUTTAL TESTIMONY OF MAXIMILIAN P. CHANG

I. INTRODUCTION / SUMMARY.

Q. PLEASE STATE YOUR NAME, OCCUPATION, AND ADDRESS.

A. My name is Maximilian Chang and I am a Principal Associate with Synapse Energy Economics, an energy consulting company located at 485 Massachusetts Avenue, Cambridge, Massachusetts.

Q. ARE YOU THE SAME MAXIMILIAN CHANG WHO TESTIFIED PREVIOUSLY ON BEHALF OF THE HAWAII DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("CONSUMER ADVOCATE" OR "CA"), IN THIS PROCEEDING REGARDING ISSUES RELATED TO RELIABILITY, LOW-INCOME RATEPAYER BENEFITS, NUCLEAR DECOMMISSIONING FUNDS, RENEWABLES, AND COMPETITION IN THE PROPOSED MERGER TRANSACTION?

A. Yes, I am.

Q. WHAT IS YOUR UNDERSTANDING OF THE COMMISSION'S SCOPE FOR REBUTTAL TESTIMONY?

A. In its recent Order No. 33116, filed on September 11, 2015 in this Docket, the Public Utilities Commission of the State of Hawaii ("Commission"), in order to "manage these proceedings as efficiently and effectively as possible," requested that the parties provide additional pre-filed testimony to further clarify

the issues in this proceeding. The Commission requested that the Intervenors provide rebuttal testimony related directly to issues raised in the Applicants' responsive testimony (e.g., additional transaction commitments, re-assessment of economic benefits, direct responses to Intervenor testimony) and also that the Applicants provide subsequent responsive testimony. The Commission also requires that the requested testimony be "strictly limited" to issues not previously addressed. That is, the Intervenors' rebuttal is to be limited to issues raised only in the Applicants' responsive testimony and, in turn, the Applicants' responsive testimony is to be limited to issues raised only in the Intervenors' rebuttal testimony.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony in this proceeding follows the Commission's guidelines and provides rebuttal to the Applicants' responsive testimony, including the newly offered transaction commitments and the Applicants' direct comments regarding issues raised in my direct testimony.

Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.

A. My testimony is organized in six sections. First, I address the Applicants' new commitments to provide pre-funding for an investment fund of $2.5 million per year for four years, which is detailed in the Applicants' new Commitment 14. Next, I address the Applicants' new Commitment 40 to improve SAIDI and SAIFI

by 20 percent relative to a three-year historical baseline that is yet to be determined. I also comment on the Applicants' new commitments regarding the workforce development concerns that I discussed in my direct testimony.

I reiterate my concerns regarding decommissioning risks associated with the possible early retirement of the NextEra nuclear fleet; these concerns were brushed aside by the Applicants' witnesses Reed and Lapson. I also discuss the Applicants' new commitments intended to address competition safeguards. Finally, I discuss the additional testimony offered by the Applicants regarding merger-related Smart Grid benefits.

While these new commitments are welcome additions to the Applicants' original commitments, overall these new commitments have not resolved all of my concerns and recommendations that I raised in my direct testimony.

II. NEW CUSTOMER BENEFIT COMMITMENTS.

Q. PLEASE SUMMARIZE YOUR FINDINGS REGARDING APPLICANTS WITNESS GLEASON'S INTRODUCTION OF A NEW CUSTOMER BENEFIT COMMITMENT TO PRE-FUND $2.5 MILLION PER YEAR FOR EACH YEAR OF THE FOUR-YEAR GENERAL BASE RATE CASE MORATORIUM.

A. While I commend the Applicants for making this commitment to pre-fund $2.5 million per year for four years to be used for the public interest at the Commission's discretion and direction, I am concerned that the Applicants have not provided sufficient detail regarding this new commitment to determine

if it is a real benefit to Hawaii ratepayers: the Commitment is contingent upon the Commission's approval of the Applicants proposed rate-related commitments[1] that are addressed in the testimony of other Consumer Advocate witnesses.

Q. HAVE THE APPLICANTS INDICATED HOW THE FUNDING COULD BE USED BY THE COMMISSION?

A. Not specifically. The Applicants have noted that the funding could be used to help develop specific programs that will directly benefit low-income customers, as described under the Applicants' proposed Commitment 19.[2, 3]

Q. DO YOU HAVE CONCERNS REGARDING THE DURATION OF THE PROPOSED PRE-FUNDING?

A. While $2.5 million per year could be helpful in addressing the Commission's public interest concerns, I am concerned that the duration of the proposed funding—four years—may be insufficient to sustain any long-term solutions that could be proposed for the Commission's consideration. Programs funded at that level may take a substantial amount of time to design, ramp up, implement, and become self-sustaining. Under the current proposal, in Year Five the

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1 Applicants Exhibit-36 at 66:21-67:1.

2 Applicants Exhibit-37 at page 4.

3 LOL-IR-467.

Applicants' pre-funding may drop to zero, thus effectively ending whatever program(s) may have been funded, if the program's annual expenditures averaged $2.5 million per year. Otherwise, to support a long-lived program, a smaller annual budget would be necessary, which might limit the possible programs and number of low-income customers who could take advantage of any such program. I do acknowledge that the Applicants are open to extending the duration of this program, but the Applicants have not made a determination.[4] Thus, in the absence of any commitment to an extension, I assume that the program will end after the four-year funding commitment.[5]

Q. HAVE THE APPLICANTS INDICATED THAT THEY WILL SEEK RECOVERY FOR THE PRE-FUNDING OF THE PROPOSED $10 MILLION?

A. No. At this time, it appears that the Applicants will not seek recovery for the $2.5 million per year for four years of pre-funding as described in Commitment 14.[6,7] I believe that this is a good step on the part of the Applicants, because the $10 million in pre-funding should come from the shareholders of NextEra and should not be recoverable from Hawaii ratepayers.

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4 CA-IR-393.

5 CA-IR-393.

6 DBEDT-IR-258.

7 CA-IR-393.

Q. PLEASE EXPLAIN YOUR CONCERNS REGARDING THE APPLICANTS' LINKAGE OF THE PROPOSED PRE-FUNDING COMMITMENT TO THE APPLICANTS' PROPOSED RATE-RELATED COMMITMENTS.

A. The Applicants have indicated that the funding is contingent on approval of **all** rate commitments enumerated in Applicants Exhibit 37 as Commitments 8 through 14.[8, 9] The Consumer Advocate's rebuttal testimonies of Witnesses Michael Brosch and Stephen Hill critique the Applicants' proposed rate-related commitments that are linked to Commitment 14. As discussed by Witnesses Brosch and Hill, the Applicants' rate-related commitments provide consumers with significantly lower benefits relative to the rate plan advanced by the Consumer Advocate. As a result, I am concerned that the Applicants' linkage between the pre-funding commitment and the Applicants' rate-related commitments may not result in net benefits for Hawaii ratepayers because any benefit from the proposed public interest funds might be subsumed by the detrimental effects of accepting the Applicants' rate-related commitments.

[8] LOL-IR-467.

[9] CA-IR-393.

III. RELIABILITY.

Q. PLEASE SUMMARIZE YOUR FINDINGS REGARDING APPLICANTS' COMMITMENT 40 TO ACHIEVE A 20 PERCENT IMPROVEMENT IN SAIDI AND SAIFI RELATIVE TO A THREE-YEAR HISTORICAL BASELINE THAT HAS YET TO BE DETERMINED BY THE APPLICANTS.

A. The Applicants' new commitment to achieve a 20 percent improvement in SAIDI and SAIFI is a positive step in improving long-term reliability of the Hawaiian Electric Companies. Because the Applicants have not provided any costs associated with the proposed reliability commitment, however, I recommend that the Commission not view the proposed reliability commitment as a pre-approval for future distribution capital spending. I am also concerned that the proposed commitment does not impose any timeline for the Applicants to achieve the proposed 20 percent reliability improvement. Given that the Applicants have failed to provide information on the expected costs or a timeline to achieve their proposed 20 percent reliability improvement, it is impossible to assess the reasonableness of this proposed commitment.

Finally, I recommend that the proposed commitment not be seen as a ceiling in determining long-term reliability improvements for the Hawaiian Electric Companies. The goal of the Hawaiian Electric Companies should still be first quartile performance as I have recommended in my direct testimony.

Q. AT THIS POINT, HAVE THE APPLICANTS INDICATED WHAT WILL BE THEIR THREE-YEAR HISTORICAL BASELINE TO DETERMINE SAIDI AND SAIFI IMPROVEMENTS?

A. The Applicants have only indicated that they will make the determination of the three-year historical baseline once the merger is approved. They further state that the baseline will be provided as part of the Applicants' plan to achieve the reliability commitments, which will be submitted to the Commission within 12 months following approval of the merger.[10]

Q. WHAT WOULD A THREE-YEAR HISTORICAL BASELINE LOOK LIKE?

A. It depends on which three years the Applicants decide to use as a baseline, and whether they decide to develop a baseline on a consolidated basis or at the individual company level. At this point, the Applicants have not indicated if the historical baseline will be at the individual Company level or at the consolidated level. For illustrative purposes, I present in Table 1 what a 20 percent improvement would be relative to the most recent historical three-year average based on the data provided in the Applicants Exhibit-70.

[10] DBEDT-IR-240.

Table 1 Historical Hawaiian Electric Companies SAIDI and SAIFI Based on IEEE 2.5 Beta Methodology from Applicants Exhibit-70

SAIDI based on IEEE Beta 2.5 Methodology*				
Year	Consolidated	HECO	MECO	HELCO
2010	103	106	77	103
2011	130	113	151	170
2012	118	106	149	135
2013	107	103	117	115
2014	123	104	142	173
2012-2014 Average	116	104	136	141
20% Improvement	**93**	**83**	**109**	**113**

SAIFI based on IEEE Beta 2.5 Methodology*				
Year	Consolidated	HECO	MECO	HELCO
2010	1.14	1.17	1.36	0.96
2011	1.32	1.13	1.74	1.74
2012	1.30	1.14	1.87	1.57
2013	1.19	1.09	1.30	1.60
2014	1.37	1.25	1.85	1.69
2012-2014 Average	1.29	1.16	1.67	1.62
20% Improvement	**1.03**	**0.93**	**1.34**	**1.29**

Notes
Data from Applicants Exhibit-70
*Excludes generation events noted in Applicants Exhibit-70

Q. DOES IT MATTER IF THE BASELINE IS AT THE CONSOLIDATED OR INDIVIDUAL COMPANY LEVEL?

A. It might, but it will depend on the data that the Applicants provide in their reliability plans should the Commission approve the merger. If the Commission allows the Applicants to measure reliability improvements on a consolidated basis, it may inadvertently have the effect of shifting reliability spending to favor circuits with a large number of customers that drive SAIDI and SAIFI numbers.

Because HECO represents approximately 66 percent of the Hawaiian Electric Companies customer base, I can envision a scenario in which the Applicants achieve the 20 percent reliability improvement on consolidated basis by focusing on the HECO service territory, but with only modest improvements to the HELCO and MECO territories. A 20 percent improvement at the individual company level would ensure that customers across all three companies see improved reliability, should the Commission approve the merger.

Q. DO YOU HAVE ANY COMMENTS REGARDING THE 2015-2020 HAWAIIAN ELECTRIC COMPANIES' STRATEGIC PLAN'S 2020 SAIDI TARGETS OF 100 MINUTES?

A. Yes. I note that unlike the Applicants' Commitment 40, the Hawaiian Electric Companies' 2015-2020 Strategic Transformation Plan aims to achieve a SAIDI target of 100 minutes by 2020.[11, 12, 13] By contrast, the Applicants' reliability commitments have no timeline to achieve the 20 percent improvement in SAIDI and SAIFI.

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[11] Applicants Exhibit-65 at 7.

[12] DBEDT-IR-240.

[13] I note that there is a slight discrepancy in the timing of when the Hawaiian Electric Companies claimed to have developed the 100 minute target for 2020 SAIDI between the 2015-2020 Strategic Transformation Plan in 2014 (DBEDT-IR-240) and May 2015 as stated in the response to CA-IR-328.

Q. HOW DOES THE 2014 STRATEGIC TRANSFORMATION PLAN'S TARGET OF A SAIDI OF 100 MINUTES BY 2020 COMPARE WITH THE 20 PERCENT IMPROVEMENT PROPOSAL FROM THE APPLICANTS?

A. The following illustrative table shows the relative percent improvement of the 2020 SAIDI goal absent the merger and on a normalized basis.

Table 2 Historical Hawaiian Electric Companies SAIDI Reported on Normalized Basis and Compared to 2015-2020 Strategic Transformation Plan 2020 SAIDI Target

HECO, HELCO, and MECO Consolidated SAIDI (normalized)							
		2008	**2009**	**2010**	**2011**	**2012**	**2013**
Number of Customers	a	440,567	441,607	443,213	445,496	447,710	450,297
Customer-Hours Interrupted	b	793,224	813,519	793,953	1,423,596	880,038	870,663
SAIDI (Minutes)	c=(b/a)*60	108	111	107	192	118	116
Percent improvement of 100 minute target compared to 2013 SAIDI of 116 minutes							-14%
Percent improvement of 100 minute target compared to 2011-2013 average of 142 minutes							-30%
Notes Consolidated SAIDI based on data from Tables 38, 42, and 46 from *State of Hawaii Public Utilities Commission Annual Report for Fiscal Year 2014,* dated January 2015							

I acknowledge that the Hawaiian Electric Companies' 100 minute SAIDI goal is on a consolidated basis, and that the Hawaiian Electric Companies have not indicated if the 2020 target is on a normalized basis or for all outages.[14] However, these results indicate that, absent the merger and without using IEEE 2.5 beta methodology, the Hawaiian Electric Companies were prepared to improve SAIDI by 14 percent relative to the 2013 SAIDI value of 116 minutes and 30 percent relative to the (2011-2013) three-year historical average of 142 minutes. In other words, if the Applicants choose to establish a consolidated baseline based on the historical average from 2011-2013, their

[14] CA-IR-376, Attachment 1, at 5.

proposed reliability commitment could be less stringent than the existing commitment made by the Hawaiian Electric Companies prior to the merger.

Q. ARE THERE PENALTIES IF THE APPLICANTS FAIL TO MEET THE PROPOSED RELIABILITY COMMITMENT OF A 20 PERCENT IMPROVEMENT IN SAIDI AND SAIFI?

A. At this point, the Applicants have not indicated whether there would be penalties associated with failing to meet the 20 percent improvement for SAIDI and SAIFI relative to the historical baseline. In response to discovery, the Applicants only indicated that they are open to either incentives or penalties for this new reliability commitment.[15]

Q. DO YOU FIND THE LACK OF PENALTIES OR INCENTIVES PROBLEMATIC?

A. While I believe that the Applicants are sincere in their proposed reliability commitment, I also believe that NextEra management and shareholders need to bear some risk and/or deserve some reward to ensure that the reliability commitment will be meaningful. The commitment will probably require some changes to the existing distribution capital budgets for the Hawaiian Electric Companies, and require the companies to recover associated distribution capital costs from ratepayers. Should the Commission approve the merger, I

[15] DBEDT-IR-176.

recommend that the Commission also consider some penalty and/or reward mechanism to ensure there are the appropriate incentives for the Applicants to achieve the reliability commitments and disincentives to discourage failure in meeting the reliability commitments.

Q. DO THE APPLICANTS HAVE AN ESTIMATE OF THE COST ASSOCIATED WITH THE PROPOSED RELIABILITY COMMITMENT?

A. No, the Applicants claim that they cannot reasonably estimate what the future costs will be until they have undertaken a more detailed analysis that will occur once the merger is approved.[16]

Q. HAVE THE APPLICANTS ASSESSED THEIR ABILITY TO MEET THEIR PROPOSED RELIABLITY COMMITMENTS WITH ANY EXISTING BUDGETS?

A. I am not aware if the Applicants have made any linkage of their proposed 20 percent reliability improvements to any of the budgets. I note that the Applicants' responsive testimony lacked discussion of any budgets related to the distribution capital spending.

[16] DBEDT-IR-176.

Q. PLEASE STATE YOUR CONCERNS REGARDING THE APPLICANTS' COMMITMENT TO MEET THEIR PROPOSED RELIABILITY COMMITMENTS ABSENT ANY EXISTING BUDGETS.

A. I am concerned that, should the Commission approve the merger, the Applicants may assert that such an approval is at least an implicit endorsement of future budgets provided in the reliability plans that will be filed after the merger. The Hawaiian Electric Companies will need to continue to demonstrate to the Commission that its reliability-related expenditures remain reasonable and prudent.

Q. IN HIS RESPONSIVE TESTIMONY, MR. OLNICK CLAIMS THAT THE APPLICANTS' RELIABILITY PROPOSAL IS MORE PRACTICAL, EFFICIENT AND BENEFICIAL FOR HAWAIIAN ELECTRIC COMPANIES' CUSTOMERS. PLEASE RESPOND.

A. Mr. Olnick states that for the Hawaiian Electric Companies to achieve first quartile performance for SAIDI and SAIFI would require the Hawaiian Electric Companies to improve 2014 consolidated SAIDI by 50 percent and SAIFI by 46 percent.[17] Mr. Olnick then adds that achieving those levels of reliability performance will be "no small task and require significant review, analysis, plans, resources, investments and, unfortunately time."[18] I agree with

[17] Applicants Exhibit-69 at 19:12-17.

[18] Applicants Exhibit-69 at 19:22 through 20:2.

Mr. Olnick's assessment that it will take significant review, analysis, investments, and time for the Hawaiian Electric Companies to transform themselves from third quartile to first quartile performance. However, I think this merger proceeding provides the opportune moment to transform the Hawaiian Electric Companies, which includes transforming the companies to achieve higher levels of reliability than the Applicants are proposing.

Q. PLEASE ELABORATE ON WHY YOU THINK THAT THIS IS AN OPPORTUNE MOMENT FOR THE HAWAIIAN ELECTRIC COMPANIES TO TRANSFORM ITSELF IN TERMS OF RELIABILITY PERFORMANCE.

A. The Applicants use the term "transform" throughout their responsive testimony to describe the proposed merger transaction.[19] For instance, the Applicants are fully supportive of the 100 percent renewable energy goal by 2045.[20] I think that having a distribution system with first quartile reliability performance complements the clean energy transformation commitments made by the Applicants.

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[19] In Book 1 of the Applicants' responsive testimony, I count 77 instances of the term "transformation" or "transform."

[20] Applicants Exhibit-37, at 1.

Q. PLEASE RESPOND TO WITNESS OLNICK'S ASSERTION THAT REACHING FIRST QUARTILE PERFORMANCE WILL REQUIRE REVIEW, ANALYSIS, INVESTMENTS, AND TIME.

A. I agree with Mr. Olnick's assessment that it will take review, analysis, investments, and time for the Hawaiian Electric Companies to reach first quartile. As I have stated earlier, the Applicants have already committed to develop a plan within twelve months to help identify how to achieve its 20 percent reliability improvement.[21] That plan can be expanded to determine the course of action to achieve 50 percent improvement. In addition, the Applicants have also committed to develop costs for the 20 percent improvement, I do not see why the Applicants cannot develop budgets to achieve 50 percent improvement. Finally, the Applicants have indicated that it will take time to achieve first quartile performance, to which I agree. As I have stated earlier, the Applicants have not provided any timeline to achieve their 20 percent commitment. Thus, I see no impediments for the Applicants to develop a timeline to achieve what would be 50 percent improvement. Ultimately, first quartile reliability performance will complement the Hawaiian Electric Companies clean energy transformation.

[21] Applicants Exhibit-37, Commitment 40, at 6.

Q. WHAT ARE YOUR RECOMMENDATIONS REGARDING THE PROPOSED RELIABILITY COMMITMENTS?

A. Should the merger be approved, I recommend that the Commission require the Applicants to achieve first quartile performance in a cost-effective manner. In addition, the Commission should require the Applicants to explain their rationale for choosing a three-year historical baseline. The Commission will also need to ensure that the budgets associated with the proposed reliability commitments should not be taken as pre-approvals and that the Applicants will need to demonstrate that spending remains reasonable and prudent. If the merger is approved, Applicants should file their reliability improvement plan with the Commission, and once the plan is before the Commission, a decision can be made whether first quartile performance cannot be cost effectively achieved. Until that time, however, I contend that my recommendation is still reasonable.

IV. WORKFORCE DEVELOPMENT COMMITMENTS.

Q. DO YOU HAVE ANY COMMENTS REGARDING THE APPLICANTS' COMMITMENTS FOR WORKFORCE DEVELOPMENT?

A. Yes, it appears to me that the Applicants have only made modest commitments to promote workforce development in Hawaii if the merger is approved. These new commitments do not change my recommendations on workforce

development that I made in my Direct Testimony.[22] The Applicants' new Commitment 7 to continue to support Hawaiian Electric Companies' work in the area of green technology innovation can be viewed as an opportunity for the Applicants to promote additional workforce development in Hawaii in light of the Applicants' Commitment 5 to support the work associated with the 100 percent renewables for the Renewable Portfolio Standard.[23] However, as stated, the Applicants' proposed commitment would be just a continuation of the status quo. The Applicants' new Commitment 37 provides for incremental internship programs and recruiting opportunities above those already made available by the Hawaiian Electric Companies, and adds the University of Hawai'i to NextEra's recruiting pool.[24] This new commitment represents the bare minimum that would be expected if the Commission were to approve the merger. It seems intuitive to me that NextEra would want to recruit graduates from the University of Hawai'i if the Hawaiian Electric Companies were to be subsidiaries of NextEra. The new commitment also does not specify whether NextEra shareholder funding would go toward any workforce development plan, which is part of my recommendation.

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22 CA Exhibit-20 at 50:5-11.

23 Applicants Exhibit-37, at 1-2.

24 Applicants Exhibit-37, at 6.

Q. DO YOU HAVE ANY OTHER COMMENTS REGARDING WORKFORCE ISSUES TIED TO YOUR PREVIOUS RECOMMENDATIONS?

A. In the section above, I expressed my concerns regarding the Applicants' reliability commitments and their proposed plan that will describe how the Applicants will achieve a 20 percent SAIDI and SAIFI improvement. As part of their plan, the Applicants will provide cost information. I recommend that, should the Commission approve the merger, the Applicants also provide estimates of the workforce required to meet the SAIDI and SAIFI improvements.

V. NUCLEAR DECOMMISSIONING.

Q. DO YOU STILL HAVE CONCERNS ABOUT THE APPLICANTS' NUCLEAR GENERATION FLEET?

A. Yes. I am concerned that the direct and indirect financial risks associated with NextEra's nuclear fleet are not adequately ring-fenced to protect Hawaii ratepayers.

Q. WHAT ARE SOME NEW SOURCES OF INFORMATION ON INDIRECT RISKS ATTRIBUTABLE TO THE NEXTERA NUCLEAR FLEET THAT WERE NOT MENTIONED IN YOUR DIRECT TESTIMONY?

A. Since the filing of my direct testimony, the Applicants have filed PUC-IR-199, which contains findings about NextEra's nuclear decommissioning funds based

on a 2014 analysis conducted by FERC as part of its audit of Florida Power and Light's Open Access Transmission Tariff.

Q. WHAT WERE THE FINDINGS IN THE FERC REPORT?

A. The FERC report indicated that the NextEra merchant nuclear fleet (Duane Arnold, Point Beach, and Seabrook) had not submitted annual reports on the status of decommission funds since acquiring the three merchant nuclear generating stations. These reports are required by the Nuclear Regulatory Commission (NRC) under 18 C.F.R §35.33. NextEra had been providing separate biennial reports regarding the decommissioning funding status to the NRC. Based on the findings of the FERC analysis, NextEra has filed annual nuclear decommissioning trust fund reports starting with the 2013 calendar year.

Another finding of the FERC analysis was that neither FPL nor NextEra established separate accounts for Commission-jurisdictional monies within their decommissioning funds as required by the NRC.[25] The jurisdictional monies were collected from ratepayers for the purpose of decommissioning nuclear units. At issue is that NextEra has indicated that its decommissioning funds are currently fully funded, and, therefore, under 18 C.F.R §35.32(a)(7), NextEra is required to return any excess jurisdictional amounts to ratepayers. Because the

[25] PUC-IR-199. Attachment 1, at 37.

monies were pooled, it will be difficult to determine what money should be returned to ratepayers, if the decommissioning funds are indeed over-funded.

Q. WHAT IS THE RELEVANCE TO HAWAII FROM THIS EPISODE?

A. While the practical impacts for Hawaii are *de-minimis*, the FERC findings are an indication of the organizational complexity that the Commission could face should the merger be approved. While complexity is not necessarily a bad thing, the Commission will need to decide if the benefits of the merger outweigh the administrative burden associated with presiding over an entity as complex as NextEra.

Q. WHAT ARE YOUR RECOMMENDATIONS?

A. I continue to recommend that the Commission require the Applicants to implement clear ring-fencing requirements that protect Hawaii ratepayers from direct and indirect risks associated with NextEra's nuclear units. As I have previously stated, the timeline for decommissioning extends well beyond any four-year rate moratorium proposed by the Applicants.

VI. NEW COMMITMENTS REGARDING COMPETITION.

Q. DO YOU HAVE ANY COMMENTS CONCERNING THE APPLICANTS REVISED COMMITMENTS TO MITIGATE CONCERNS ABOUT THE PROPOSED MERGER'S IMPACT ON COMPETITION IN HAWAII'S ENERGY MARKETS?

A. While I believe that the Applicants' Commitments 44 through 46 are a good faith effort to mitigate the concerns about competition that I raised in my direct testimony, I believe that my recommendations regarding competition remain germane even with the proposed new Commitments.[26] While the Applicants' Commitment 44 to limit the participation in competitive solicitations to either a NextEra Affiliate or a Hawaiian Electric Companies operating entity is a good start, the Applicants have not made any explicit guarantees that the bidding entity represents the lowest possible bid. With reference to Commitment 46, I acknowledge the Applicants' commitment to provide a draft code of conduct within 90 day following closing, should the Commission approve the merger. However, I withhold any recommendation about the Commitment without seeing the Applicants' proposed draft code of conduct and prior to understanding how the Applicants will define the collaboration process. Finally, the Applicants failed to address my recommendation that any NextEra proposal should be

[26] CA Exhibit-20 at 51:4-25.

submitted under "open book" requirements and that, if a NextEra proposal is selected, a final cost report should be required.

VII. SMART GRID.

Q. DO YOU HAVE ANY COMMENTS REGARDING THE APPLICANTS' DISCUSSION OF THE FUTURE SMART GRID APPLICATION IN THEIR RESPONSIVE TESTIMONY?

A. Yes, I continue to reiterate that I reserve my recommendations and comments on the Hawaiian Electric Companies' Smart Grid application until I have had an opportunity to evaluate the analyses provided by the Hawaiian Electric Companies in the actual Smart Grid petition that has yet to be filed. The Applicants' have touted that NextEra Energy would assist in the development of estimated cost and savings of the installation of smart meters and the operation of a Smart Grid.[27] However, no costs and savings have been provided for intervenors to analyze.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

[27] Applicants Exhibit-72, at 2.

CA EXHIBIT-33
DOCKET NO. 2015-0022

REBUTTAL TESTIMONY

OF

TYLER COMINGS

THE DIVISION OF CONSUMER ADVOCACY

SUBJECT: ECONOMIC IMPACTS ON THE STATE OF HAWAII

CA EXHIBIT-33
DOCKET NO. 2015-0022

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DIRECT TESTIMONY OF TYLER COMINGS

I. INTRODUCTION.

Q. PLEASE STATE YOUR NAME, POSITION AND PLACE OF EMPLOYMENT.

A. My name is Tyler Comings and I am a Senior Associate with Synapse Energy Economics, an energy consulting company located at 485 Massachusetts Avenue, Cambridge, Massachusetts.

Q. ARE YOU THE SAME TYLER COMINGS WHO TESTIFIED PREVIOUSLY ON BEHALF OF THE HAWAII DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("CONSUMER ADVOCATE" OR "CA"), IN THIS PROCEEDING REGARDING ISSUES RELATED TO ECONOMIC BENEFITS OF THE PROPOSED MERGER TO THE STATE OF HAWAII?

A. Yes, I am.

Q. WHAT IS YOUR UNDERSTANDING OF THE COMMISSION'S SCOPE FOR REBUTTAL TESTIMONY?

A. In its recent Order No. 33116, filed on September 11, 2015, in this Docket, the Public Utilities Commission of the State of Hawaii ("Commission"), in order to "manage these proceedings as efficiently and effectively as possible," requested that the parties provide additional pre-filed testimony to further clarify the issues in this proceeding. The Commission requested that the Intervenors

provide rebuttal testimony related directly to issues raised in the Applicants' responsive testimony (e.g., additional transaction commitments, re-assessment of economic benefits, direct responses to Intervenor testimony) and also that the Applicants provide subsequent responsive testimony. The Commission also requires that the requested testimony be "strictly limited" to issues not previously addressed. That is, the Intervenors' rebuttal is to be limited to issues raised only in the Applicants' responsive testimony and, in turn, the Applicants' responsive testimony is to be limited to issues raised only in the Intervenors' rebuttal testimony.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony in this proceeding follows the Commission's guidelines and provides rebuttal to the Applicants' responsive testimony, including the Applicants' new estimate of economic benefits of the merger and their responses to my direct testimony concerning the potential negative impacts of the merger.

Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.

A. My rebuttal testimony focuses on issues discussed in Sections V and VI of responsive testimony from Applicants' witness John Reed. First, I discuss how the Applicants' new economic benefit estimate is misleading. Second, I re-iterate my concerns about the negative impacts of the merger.

II. THE APPLICANTS' NEW ESTIMATE OF ECONOMIC BENEFITS FROM THE PROPOSED MERGER IS MISLEADING.

Q. DID THE JOINT APPLICANTS PRESENT A NEW ANALYSIS OF THE ECONOMIC BENEFITS OF THE MERGER?

A. Yes. In his direct testimony, Mr. Reed modeled the economic benefit assuming $25 million in savings per year over four years--$100 million total--as a "reasonable estimate of what will be achieved by the Proposed Transaction."[1] Later, the Applicants referred to this $100 million savings estimate as "hypothetical."[2] In his responsive testimony, Mr. Reed states that the merger will now provide "total benefits" of "approximately $1 billion over the initial five years after the merger is approved."[3] This estimate includes $464 million in "revenue requirement net savings" and $496 million in "economic benefit to the state of Hawaii."[4] Confusingly, the sum of these numbers-$961 million-is presented in Mr. Reed's Table 2 as "net annual savings per customer," which is an error.[5]

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1 Direct Testimony of John Reed, Applicants Exhibit-33, at 44:3-4.

2 Applicants' Data Response to CA-IR-342.

3 Responsive Testimony of John Reed, Applicants Exhibit-50, at 65:4-7.

4 *Id.* Table 2.

5 Applicants' Data Response to CA-IR-515(c).

Q. WHAT DOES THE "NET SAVINGS" NUMBER REPRESENT?

A. The $465 million represents the Applicants' estimate for the cost savings to ratepayers due to the merger.[6]

Q. WHAT DOES THE "ECONOMIC BENEFIT" NUMBER REPRESENT?

A. The $496 million represents the Applicants' estimated economic impacts of ratepayers re-spending these "net savings" in the state's economy.[7]

Q. SHOULD THESE NUMBERS BE ADDED TOGETHER TO FORM "TOTAL BENEFITS?"

A. No. The Applicants are essentially counting net savings from the merger and the impact of that savings that gets re-spent in the Hawaii economy. Even if you assume the "net savings" and "economic benefit" to be legitimate, there is a significant amount of double-counting involved with the "total benefit" figure of "approximately $1 billion." When asked, the Applicants claimed that none of the net savings was included as an economic benefit.[8] This appears to be a semantic argument since the portion of that savings that is re-spent in Hawaii is indeed included.

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6 Responsive Testimony of John Reed, Applicants Exhibit-50, at 62:11-14.

7 *Id.* at 135:14 through 136:2.

8 Applicants' Data Response to CA-IR-515(b).

To give a simple example: If a customer saves $100 on his electricity bill, he may spend $75 of that $100 on other goods in Hawaii—assuming $25 is either saved or spent outside of Hawaii. The $75 spent in Hawaii then creates a multiplier impact of $50 from local suppliers of those purchases (known as "indirect impacts") and other workers in Hawaii re-spending their wages (known as "induced impacts"). The Applicants' methodology would count this chain of events as $225 in "total benefits": $100 in savings plus $75 of that savings that is re-spent plus $50 in multiplier effects. The problem in this example is that the $75 is counted twice – once as a part of the $100 of initial savings and once again as a separate amount that is combined with the estimated multiplier effect benefits. Even before accounting for the multiplier effects, it is obvious that claiming $100 in savings *plus* the $75 of that savings that is re-spent as a combined $175 "benefit" would represent double-counting.

Q. HOW MUCH OF THE "TOTAL BENEFITS" OF THE MERGER IS DOUBLE-COUNTED?

A. Nearly $324 million (in 2015 dollars) of the claimed $1 billion in savings-or 35 percent of the "total benefit"-is counted twice. Correcting for this error, the Applicants' estimated "total benefits" decreases to $606 million. The breakdown is shown in detail in Table 1, below:

Table 1: Breakdown of "Total Benefits" Claimed by Applicants[9]

	2016	2017	2018	2019	2020	TOTAL
(a) Reed revenue requirement savings (re-stated in $2015 mil)	$27	$86	$109	$122	$89	$434
(b) Reed direct impact ($2015 mil) = amount of (a) re-spent in Hawaii	$20	$64	$81	$91	$67	$324
(c) Reed indirect and induced impact of re-spending ($2015 mil)	$11	$34	$43	$48	$35	$172
Reed "total benefit" = (a) + (b) + (c)	**$59**	**$185**	**$234**	**$262**	**$191**	**$930**
Re-stated "total benefit" without double-counting = (a) + (c)	**$38**	**$121**	**$152**	**$171**	**$125**	**$606**

Q. WHY DO THE "TOTAL BENEFITS" ABOVE NOT MATCH MR. REED'S TOTAL IN HIS "TABLE 2: SUMMARY OF BENEFITS?"

A. As mentioned before, the last line in Mr. Reed's Table 2 mistakenly labels total benefits as "net annual savings per customer." He also appears to have mistakenly added real and nominal dollars together. His presentation of "economic benefits" is in real 2015 dollars (assuming both are labeled properly), while the "revenue requirement net savings" estimates are in nominal dollars (i.e., current year dollars). I have corrected this mistake in the table above by adjusting the revenue requirement savings to 2015 dollars for consistency (assuming 2 percent inflation). As a result, all estimates, including the "total benefit" estimates in Table 1 above are presented in real 2015 dollars.

[9] Applicants' Data Response to CA-IR-303, Supplemented on August 25, 2015, Attachment 2.
Row (a): "Revenue Requirement Savings" in "HEI Projected Savings" tab--adjusted to 2015 dollars assuming 2% inflation.
Row (b): "Direct Effect" in "IMPLAN - Economic Output" tab.
Row (c): "Indirect Effect" plus ""Indirect Effect" in "IMPLAN - Economic Output" tab.

Q. HAVE THE APPLICANTS FURTHER SUBSTANTIATED NET SAVINGS TO RATEPAYERS IN RESPONSIVE TESTIMONY?

Yes, only in part. Witness Reed explains that the $60 million in O&M RAM savings is now a more firm commitment from the Applicants.[10] However, other categories of net savings do not carry such commitments. For instance, the claimed savings on capital expenditures is shown to have zero "costs to achieve" in Table 3 of Mr. Reed's responsive testimony. Elsewhere, Mr. Reed explains that an estimate of these costs to achieve "has not been prepared" but "are not expected to be significant."[11] Consumer Advocate witness Michael Brosch provides a detailed discussion of the problems with the Applicants' estimates of ratepayer savings.[12]

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10 Responsive Testimony of John Reed, Applicants Exhibit-50, at 69:1-5.

11 *Id*. at 69:14-16.

12 Rebuttal Testimony of Michael L. Brosch, CA Exhibit-29, Section II.

III. THE APPLICANTS CONTINUE TO IGNORE NEGATIVE IMPACTS FROM THE PROPOSED MERGER.

Q. DOES THE APPLICANTS' UPDATED ECONOMIC IMPACT ANALYSIS REFLECT ANY PROJECTED CHANGES IN EMPLOYMENT AT THE COMPANIES AS A RESULT OF THE MERGER?

A. No. Mr. Reed continues to ignore potential job losses at the HECO Companies. The "economic benefit" shown in Table 1 only shows the impacts from the re-spending of savings; it assumes no job losses due to the merger. The Applicants' commitment to not reduce workforce is for two years, while the economic benefits are estimated over a five-year period. Thus, the net impact on Hawaii jobs remains a mystery.

Q. HOW DOES MR. REED RESPOND TO THE POTENTIAL FOR WORKFORCE REDUCTIONS AT THE HECO COMPANIES AFTER THE MERGER?

A. Unfortunately, any estimate of job losses is dismissed as "speculative" by Mr. Reed.[13] He claims that:

> There are many other lesser aspects of this merger that could impact the Hawai'i economy (positively or negatively) that cannot be quantified at this time.[14]

I do not consider possible workforce reduction a "lesser aspect" of the merger. My direct testimony showed workforce reductions from the nine mergers

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13 *Id*. at 138:5.

14 *Id*. at 137:10-12.

reviewed by Mr. Reed.[15] Yet he claims that the economic benefits are "not predicated on nor would result in any involuntary workforce reductions."[16] I agree that no workforce reductions were included in his analysis, but that does not mean they will not happen. If involuntary workforce reductions would not occur with this proposed merger, then the Applicants could commit to a freeze in reductions for longer than a two-year period—but they will not.[17]

Q. HOW DOES MR. REED RESPOND TO THE POTENTIAL FOR REDUCED SPENDING ON HAWAII BUSINESSES AFTER THE MERGER?

A. Mr. Reed also dismisses the impacts of spending on Hawai'i businesses due to the merger. The Applicants discuss the myriad savings that will occur, but do not estimate how this will affect local business. Instead, Mr. Reed claims that:

> Based on the drivers of merger savings identified by the Applicants, the impact of any spending reductions on the Hawai'i economy is expected to be minimal and I am confident that the economic benefits will be almost completely unaffected by these possible small offsets.[18]

As I discussed in my direct testimony, the Joint Applicants have not quantified the potential for reductions in activity at Hawaii businesses. Even if it is

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15 Direct Testimony of Tyler Comings, CA Exhibit-22, Table 1.

16 Responsive Testimony of John Reed, Applicants Exhibit-50, at 137:2-3.

17 Applicants' data response to DBEDT-IR-139.

18 Responsive Testimony of John Reed, Applicants Exhibit-50, at 140:15-19.

"quite minor" as Mr. Reed claims, it is not likely to be zero. I continue to recommend that the Applicants conduct a detailed analysis of how spending with Hawaii businesses will change and model the impacts of those changes on the state's economy.

Q. HOW DOES MR. REED RESPOND TO YOUR CONCERN ABOUT THE NEGATIVE IMPACTS, IN GENERAL?

A. Mr. Reed is dismissive of these concerns, claiming that:

> A speculative possibility that a 2% offsetting detriment could arise cannot be credibly raised as a challenge to the validity of the 98% of uncontested benefits.[19]

The "2%" here refers to the possible negative impacts of the merger. This is merely an illustrative percentage, since no negative economic impacts of the merger have actually been quantified. I also find Mr. Reed's claim of "98% of uncontested benefits" curious, since many witnesses involved in this case have contested these benefits.

[19] *Id*. at 144:19-21.

IV. CONCLUSION.

Q. WHAT ARE YOUR RECOMMENDATIONS?

A. The Applicants have presented new impacts of the merger that are higher and misleading. I suggest that they represent these estimated benefits more clearly. The Applicants should not be touting $1 billion in benefits when $324 million of this figure was double-counted. Also, as I discussed in my direct testimony, the Applicants continue to focus on positive economic impact of the merger while ignoring the negative impacts. As such, even after reviewing the Applicants' updated analysis, I continue to find that the *net* economic impacts of the proposed merger on Hawaii's economy are undetermined. I continue to recommend that the Applicants estimate the negative impacts of the merger along with the positive.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes. It does.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S REBUTTAL TESTIMONIES AND EXHIBITS** was duly served upon the following parties, by electronic service, personal service, hand delivery, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR § 6-61-21(d).

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DATED: Honolulu, Hawaii, October 7, 2015.