ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
HAWAIIAN ELECTRIC COMPANY, INC.,	)	DOCKET NO. 2015-0022
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.	)	

DIVISION OF CONSUMER ADVOCACY'S POST-EVIDENTIARY HEARING REPLY BRIEF

CERTIFICATE OF SERVICE

FILED
2016 MAY -2 P 4:18
PUBLIC UTILITIES COMMISSION

JON S. ITOMURA
LANE H. TSUCHIYAMA
EDWARD M. KNOX
Attorneys for the
Division of Consumer Advocacy
Department of Commerce and
Consumer Affairs
335 Merchant Street, Room 326
Honolulu, Hawaii 96813
Telephone: (808) 586-2800

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Hawaii Revised Statutes

Hawaii Public Utilities Commission Decisions

Other Authorities

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
HAWAIIAN ELECTRIC COMPANY, INC.,	)	DOCKET NO. 2015-0022
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.	)	

DIVISION OF CONSUMER ADVOCACY'S POST-EVIDENTIARY HEARING REPLY BRIEF

I. INTRODUCTION.

Applicants Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), Maui Electric Company, Limited ("MECO") (collectively, the "Hawaiian Electric Companies"), and NextEra Energy, Inc. ("NextEra") (Hawaiian Electric Companies and NextEra collectively, "Applicants") Post-Evidentiary Hearing Opening Brief ("Applicants' Opening Brief"), filed on March 31, 2016, merely restates their original case and fails to remedy the Division of Consumer Advocacy's ("Consumer Advocate") and the Public Utilities Commission's ("Commission") concerns related to whether the proposed merger transaction ("Merger") will be in the public interest.

Applicants have failed to demonstrate that the Merger, with related commitments and conditions, provides a significant and quantifiable net benefit. Additionally, in various places, such as in Applicants' Opening Brief, Applicants repeatedly warns the Commission that any amendments or imposition of additional amendments to the Applicants' proposed commitments

"will serve no purpose other than to prevent the Proposed Transaction from occurring. . . In short, a Commission order approving the merger that varies from the proposed commitments may result in a decision not to proceed with the consummation of the merger. . ."[1] Thus, Applicants have placed the Commission in an undesirable position. The Applicants are clearly providing the Commission with a "take it as is or leave it" option. Having failed to meet their burden of proof, the Consumer Advocate recommends that the Merger be rejected in its entirety.

II. THE COMMISSION MUST ESTABLISH A SIGNIFICANT, QUANTIFIABLE NET BENEFITS STANDARD TO DETERMINE THAT THE MERGER IS IN THE PUBLIC INTEREST.

The Commission's issues included the requirement that the Merger will provide "significant, quantifiable benefits to the HECO Companies' ratepayers..."[2] In spite of the clear direction provided by the Commission, Applicants maintain that the utility simply be "fit, willing and able to properly perform the service proposed."[3] The Commission's intent is clear, however, such as when Commissioner Champley specifically asked Applicants' witness Mr. Dewhurst, "where are the benefits for undertaking or assuming such uncertainty?"[4]

Further, the Commission's counsel, in his cross-examination of Applicants' witness, Hawaiian Electric Company President Alan Oshima, emphasized the relationship of substantial or significant benefits and the public interest standard:

> Q: Okay. You actually anticipated my next question ... In response to some questioning this morning, I believe you discussed what you call a no-detriment standard that you believe is the standard the Commission should apply in this case. Is that correct?
> A: Yes.

---

1 Applicant's Opening Brief, at 3. See also, similar statements, at 7, 10, 14, and 75.
2 Order No. 32695, at 19.
3 Applicants' Opening Brief, at 16-17.
4 Tr. at 2640:16.

Q: Do you agree that one standard the Commission would apply in reviewing the merger application is whether or not the transaction is in the public interest?
A: I do agree that that is part of the review.

Q: Is it your opinion that the no-detriment standard that you have referenced satisfies the public interest standard?
A: Yes, I do.

Q: Would you agree that there are other broader definitions of what constitutes the public interest?
A: I agree to that. And it depends on what conditions are imposed as to whether they turn out to be amounting to a different standard of substantial net benefits. So I think the trick will be in the types of conditions that might be imposed.

Q: Okay. And I guess I'll get my chance to prove I can read as well. I've got one question I want to read. Is it your position that the no-detriment standard satisfies Issue 1.b. as identified in Commission Order No. 32729 which states as follows: "Whether the proposed transaction, if approved, provides significant quantifiable benefits to the HECO company ratepayers in both the short and long term beyond those proposed by the HECO companies in recent regulatory filings."
A: No, I think -- well, I think it could, depending on what is considered benefits. Right? So acceleration of implementation of state policies, et cetera.

Q: Well, I understand your answer, but your standard says no detriment, and this particular issue talks about significant quantifiable benefits.

A: I don't see that those two are reconcilable.[5]

The proposed transaction, while argued by Applicants to be a generous mix of putative benefits, is offset by new and significant regulatory risks, unquantified costs, and complexities. In Order No. 15573, the Commission considered Citizens Utilities Company's ("Citizens'") proposed acquisition of Gasco, Inc. ("Gasco"), Hawaii's regulated gas utility, in Docket No. 97-0035. The Commission stated, in relevant part, that:

---

5 Tr. at 381:23-383:13.

. . .

> Applicants suggest that the scope of the [C]ommission's review in this proceeding is whether Citizens is fit, willing, and able to perform the services currently offered by Gasco. The Consumer Advocate argues that the [C]omission has broad authority to review any aspect of the application in order to safeguard the public interest. Applicants and the Consumer Advocate are both correct. Before the [C]omission approves any acquisition of a public utility by a public utility or any merger of public utilities in Hawaii, the [C]omission must find [that] (1) . . . the acquiring public utility is fit, willing, and able to perform the services currently offered by the utility to be acquired, and (2) . . . the public interest is protected.[6]

The Commission accepted a 'substantial net benefits' standard of review [in assessing the proposed Hawaiian Telcom–Verizon Hawaii transaction]."[7]

Applicants' expert witness, John Reed, agreed that the provision of "net" benefits is important.

> Q: Would you agree that in considering the quantified benefits of the merger, it would be most appropriate to consider net benefits, taking into account any associated costs or offsetting factors?
> A: Yes.[8]

This Commission would not stand alone in the effort to require a showing of ratepayer benefits instead of simply finding "no harm." In D.P.U. 10-170, Joint Petition for Approval of Merger between NSTAR and Northeast Utilities, pursuant to G.L. c. 164, § 96, the Department of Public Utilities of the Commonwealth of Massachusetts concluded, in relevant part, that:

> In conducting § 96 reviews, the Department has long found evidence of public benefits and, even under the Department's "no net harm" standard, the Department has nearly always determined that the § 96 proponents' demonstrated benefits have outweighed the costs. . . . Even in D.P.U. 850, at [page] 7, the Department stated that a close reading of our precedent reveals a consistent search for and reliance upon benefits.
>
> . . . .

---

6 Order No. 15573, Docket No. 97-0035, at 3-4 (filed on May 8, 1997).
7 Consumer Advocate Opening Brief, at 5-7 (filed on Mar.31, 2016).
8 Tr. at 1705:11-15.

> . . . Companies contend that requiring net benefits will create a standard that is inherently ambiguous and difficult to evaluate . . . . We disagree. A § 96 transaction requires the Department to quantify positive and negative impacts to the extent [that] such quantification can be made, and undertake a more qualitative analysis of those aspects that are hard to measure. . . . The Department has previously conducted this evaluation pursuant to a "no net harm" standard, using the factors established by case law and statute, and we will continue to do so pursuant to a "net benefit" standard.[9]

The Commission's precedents and established administrative rulings empower the Commission with broad, discretionary authority in its review of public utility acquisitions and mergers in the State.[10] The applicable standards under HRS §§ 269-18 and 269-19, and other statutes, rules, provide the Commission with broad, discretionary authority, flexible enough to adopt a "net benefit" standard.[11]

III. APPLICANTS FAILED TO DEMONSTRATE THAT THE PROPOSED TRANSACTION WILL PRODUCE SIGNIFICANT, QUANTIFIABLE BENEFITS.

In its filings in this proceeding, the Consumer Advocate has provided ample evidence to support its analyses and its recommendations. The same cannot be said for Applicants who have generally relied on a "trust us" approach to convincing the Commission. Applicants may claim that they have responded to hundreds and hundreds of information requests and provided thousands and thousands of pages of information, but as the Commission set forth in Decision and Order No. 13950:

> Reliable, probative, and substantial evidence, as that term is used in HRS § 91-10(1), refers to both the sufficiency and quality of the evidence presented. The evidence must be relevant and credible, probative and of material value, and of a quality and quantity sufficient to justify a reasonable man to reach

---

9 Interlocutory Order on Standard of Review, Commonwealth of Massachusetts Dept. of Pub. Util., D.P.U. 10-107, Joint Petition for Approval of Merger between NSTAR and Northeast Utilities, pursuant to G.L. c. 164, § 96, at 24-27 (dated Mar. 10, 2011) (internal citations omitted).

10 Order No. 15573, Docket No. 97-0035, at 3.

11 See e.g., Decision & Order ("D & O"), Docket No. 2008-0109 (filed on Dec. 1, 2008) (approving Hawaii Water Service Company, Inc.'s proposed acquisition of Kukio Utility Company, LLC, a water and wastewater service provider in the Kailua-Kona area of the Island of Hawaii); D & O No. 21696, Docket No. 04-0140 (filed on Mar. 16, 2005) (conditionally approving Hawaiian Telcom's proposed acquisition of Verizon Hawaii, Hawaii's incumbent local exchange carrier); D & O No. 20354, Docket No. 03-0051 (filed on July 25, 2003) (approving Citizens' sale of The Gas Company, LLC, to K-1 USA Ventures, Inc.).

> a conclusion on a tendered issue. . . In this docket, GTE Hawaiian Tel supplied enormous amounts of facts, figures, statistics, and other data in its exhibits, workpapers, and responses to information requests. However, it is not sufficient simply to submit volumes of data. What is required is the submission of reliable, relevant, and probative information' as necessary, the culling of such information from the mass of data; and the reconciliation of contradictions and discrepancies in the data. **In other words, it is the quality of the information that matters, not its volume.** From our review, we have concluded that GTE Hawaiian Tel's submissions are of questionable reliability, lacking in details and supporting data, and often inconsistent. [emphasis added]

While Applicants may have provided volumes of documents, the quality of those documents are of questionable reliability, lacking in details, not substantive, and should not be accepted by the Commission. The quality of the data will not allow the Commission to find that Applicants' claims that they will provide substantial benefits are supported.

A. RATE BENEFITS FOR CUSTOMERS ARE TEMPORARY AND ILLUSORY.

Applicants' claims of rate benefits, including large future cost savings, are highly subjective and exaggerated. Applicants assert in their Opening Brief:

> Approval of the Proposed Transaction is in the best interests of the State's economy and the communities served by the Companies due both to the huge positive benefits and changes that the merger will bring, as well as to the things that will not change. The positive results include the nearly $1 billion in expected economic benefits..." which are said to include, "....benefits provided to customers beginning upon closing include $60 million in rate credits over a four-year period, more than $132 million in estimated savings from the proposed general base rate case moratorium, and hundreds of millions of dollars of additional benefits associated with merger synergies, enhanced purchasing power and stronger credit ratings.[12]

The Consumer Advocate discredited the Applicants' inflated claims of these "positive benefits," namely, the expected direct savings to the utilities as well as the overstated and double counted claims of indirect savings to the State's economy.[13] The only "benefits" that can be taken seriously

---

12 Applicants Opening Brief at 17.

13 CA-Exhibit-29, at 12:1-14:16, and 20:1-23:12, and CA Exhibit-33, at 3:1-6:13.

and counted as public interest benefits if the Merger is approved are those estimated Merger savings which are guaranteed to flow to consumers. Unfortunately, these guaranteed benefits are non-existent and potentially even negative in value and not likely to be realized by ratepayers.

It is not surprising that Applicants' focus during negotiations of the Merger was primarily upon shareholder interests and then only secondarily upon the minimally acceptable package of regulatory conditions and concessions that would be required to achieve regulatory approval. Applicants' witness Oshima admitted that the HECO Companies and Hawaiian Electric Industries ("HEI") did not make any specific offer concerning customer benefits to NextEra and conducted no independent quantitative analysis to determine that $60 million was an appropriate rate reduction figure.[14] On the other hand, Mr. Oshima admitted that the interests of HEI shareholders caused HEI to negotiate increased consideration, from $30 to $33.50 per share, or roughly a 10 percent increase.[15] According to Mr. Oshima:

> When a transaction like this occurs, the board has a fiduciary obligation to investigate whether the opportunity is fair from a shareholder standpoint, but it also has the obligation to see whether it would be able to deliver the benefits that are proposed. And that's the regulatory environment. Will the regulators see that? So all of those things have to be considered.[16]

The course of HEI and NextEra's negotiations make obvious that shareholders' interests were carefully considered and protected. It is also obvious that HEI and the Hawaii Electric Companies did not insist on or negotiate consumer benefits as a condition of accepting NextEra's proposal. Instead, consumer benefits were left entirely to NextEra, the parent company to a utility thousands of miles away from Hawaii.

---

14 Tr. at 380 and 123.
15 Tr. at 116-117, 121-122.
16 Tr. at 291.

Applicants' witness Tayne Sekimura confirmed Commission's counsel's assumption that there is not opportunity to compare expenditures of a stand-alone company with a merged company.

> Q: Much of the Applicants' position depends on cost savings. And yet you have not, in this application or in testimony that I have read, presented a concrete way in which we can analyze those savings; is that correct?
> A: That hasn't been developed, but there are estimates of what that savings could yield. It's not specific; it's an estimate.[17]

Applicants provided no opportunity for the Commission to determine whether a net benefit exists because there is no evidence that Applicants weighed the costs to achieve savings against the presumed magnitude of the proposed estimated savings. The Commission must reject speculative estimates of potential future savings that fail to identify guaranteed up-front and continuing rate relief for customers. Applicants' witness Colton Ching was asked whether costs to achieve savings would be tracked.

> Q: Have you been told that you need to separately account for cost to achieve savings in the event that this merger is approved?
> A: To account for savings, I have not.[18]

An example of a temporary and illusory benefit is Applicants' proposed rate plan. Applicants propose credits that start at $6 million and, over four years, escalates to $24 million. Then, inexplicably, after the fourth year, the rate reductions are terminated and rates are increased by $24 million, despite the fact that merger integration work should be largely completed and all real cost savings should be continuing. Applicants' rate commitments arbitrarily expire in 48 months, when claimed merger savings have stabilized after completion of most merger integration

---

17 Tr. at 1449:5-14.
18 Tr. at 1258:18-21.

work. Commissioner Champley was understandably troubled by the fact that Applicants' $60 million rate credits would not result in a reduction that would benefit customers.

> Q: Okay. So what I'm trying to establish here is, you know, I just need to see things from a very high-level perspective. And I had a tough time yesterday trying to figure out whether customers were getting assurance of at least some kind of base rate reduction. And apparently, from the numbers here, they will not. Would you agree?
> A: If you do the math your way, that's correct.[19]

Within the four-year period of temporary rate reductions, Applicants place numerous conditions upon the proposed limited rate relief relegating the customer benefit commitments to nothing more than shallow promises. Some of the conditions bind the Commission by requiring that there be: 1) no changes to the fuel adjustment clause ("ECAC"), 2) Commission approval of the flawed Above the Revenue Adjustment Mechanism ("RAM") Cap rate increase proposals, and 3) back door revenue increases through acceleration of RAM revenue recognition. The Consumer Advocate's concern is that the Applicants' rate reductions and rate case moratorium plan are not guaranteed and are potentially more harmful to ratepayers because of these conditions and the perpetuation of overstated debt and equity capital costs. While Applicants contend that there will be a rate moratorium, this assertion is very misleading. First, Applicant's expert witness John Reed admits that a rate increase was possible during the moratorium.

> Q: Do you have any estimate on how much total rates -- that is, the bottom line on ratepayers bills -- would increase during a rate case moratorium?
> A: No.[20]

> A: ..., no, I have not done an analysis of what the absolute level is likely to be over the next four or five years.[21]

---

19 Tr. at 1658:8-16.
20 Tr. at 1698:19-25.
21 Tr. at 1699:4-6.

Next, Applicants' condition only relates to a base rate moratorium. However, among the Applicants' conditions is that existing cost recovery mechanisms remain intact. As a result, if Applicants' conditions are accepted as is, Applicants would still be allowed to impose possibly significant rate increases through the RAM, the proposed Above the RAM Cap, REIP, PPAC, IRP and ECAC mechanisms. The "value" of the Applicants' rate case moratorium is unquantifiable and should be viewed as a poor attempt to suggest significant value when there is none.

Applicants decline to offer any detailed analysis of how the Hawaiian Electric Companies and NextEra business functions would actually be combined or how actual costs within each department and function will be decreased.[22] Applicants' witness, Mr. Reed, assumes an immediate ten-percent savings across the entirety of future construction spending by the Hawaiian Electric Companies and applies this to estimated future capital spending at projected levels which exceed recent utility construction forecasts and include significant major transformational and software project spending that have not received Commission approvals.[23] The Commission should not accept speculative projected estimates that may be incorporated for the purpose of increasing the value of presumed savings since the Applicants have not determined a baseline to determine how these savings could be realized in the future.[24]

Applicants also contemplate debt cost savings due to expectations of higher credit ratings if the merger is approved, but Applicants would not reset the cost of debt and equity capital until after a four year rate case moratorium has expired, keeping capital cost savings entirely for shareholder benefit except for any incidental Allowance for Funds Used During Construction rate changes that may occur. Applicants offer no truly "guaranteed" rate reductions that would assure

---

22 Tr. at 816:13-18; Tr. at 1673:14-16.
23 Tr. at 1615:19-25.
24 Tr. at 1447:6-14.

ratepayer participation in the claimed future utility cost savings. Applicants' rate commitments freeze the cost of debt, cost of equity, and equity ratio at the levels approved in prior rate cases that are now excessive for another four or more years. Furthermore, Applicants' rate commitments do not provide for any penalty in the event the moratorium is not honored.

Applicants intend to keep claimed non-fuel O&M expense savings for shareholders and have offered customers only the fixed and temporary rate reductions totaling a cumulative $60 million across four years that are unreasonably conditioned upon other regulatory concessions that benefit only shareholders.

Applicants rely heavily on the promise of a higher bond rating and a lower cost of capital for HECO to promote the proposed Merger, but there is no guarantee that the proposed Merger will in fact lower the cost of debt; and, even if it does, the debt cost savings may not be worth the risks of the proposed Merger.

HECO's current cost of debt is affected by its bond ratings, which are not uniformly weak. In Applicants' Opening Brief, the terms "bond ratings" and "credit ratings" are frequently used to imply ratings from all three major ratings agencies; however, as the terms appear to define financial weakness and the need for improvement, it is just a presumed rating from a single rating agency—S&P.[25] Applicants insinuate that S&P may downgrade HECO further in any imminent timeframe, but Applicants have provided no plausible evidence to support that presumption. Moody's and Fitch represents that HECO has ratings around BBB+/A-, which are similar to NextEra's ratings.

Despite assertions in the Applicants' Opening Brief that NextEra can and may help HECO find additional capital to cover planned expenditures in connection with Hawaii's transition to clean energy,[26] Applicants have not articulated a mechanism how NextEra would help HECO

---

25 Applicants Opening Brief, at 13, 31, 36, 45, 57, and 59.

26 Applicants Opening Brief, at 25, 41, 42, 61, and 62.

"find" more capital. Rather, if the proposed Merger were approved, HECO's debt will be kept strictly separated from Next Era.[27] In fact, *more* capital should be unnecessary because HECO maintains that it can attract sufficient capital for planned expenditures on a standalone basis,[28] and has never said that it cannot find *enough* capital for planned expenditures.

Finally, any savings from a less expensive cost of debt for HECO will be offset by NextEra attributing excessive high-cost equity in HECO so that NextEra can issue more debt up at the corporate level or purchase more highly leveraged unregulated assets.[29]

The Applicant's plan would reduce a typical residential customer bill by less than $0.37 per month in the first year after Merger closing,[30] with even this reduction contingent upon all of the many conditions set forth in Applicants' Exhibit-37A and Exhibit-46 and then reclaimed by Applicants through RAM accruals and other offsetting regulatory proposals.

Witness Sekimura could not respond to the Consumer Advocate's inquiry about whether rate-related commitments can be pro-rated due to the separate circumstances of the HELCO and MECO subsidiaries of Hawaiian Electric Companies.

> Q: So this brings me to another line of questions that we haven't really talked about. You have three companies that filed three separate rate cases; right?
> A: That's correct.
> Q: The conditions and qualifications in Exhibit 46 don't speak to what happens if one company suffers financial distress and feels the need to file a rate case during the rate case moratorium?
> A: That's correct. It doesn't get into that level of detail. It would have to be evaluated on a case-by-case basis.[31]

---

27 Applicants' Commitment 63A.

28 Applicants Resp. to CA-IR-578.

29 Consumer Advocate Ex. 7, at 45-48.

30 See CA Exhibit-29, at 28, where the Annual Savings per residential customer for each utility/system ranges from $2.51 to $4.40 via Applicants $6 million first year rate credit. The monthly 1/12 share of $2.51 is 21 cents per month (Molokai) and the monthly equivalent of $4.40 is 37 cents on Maui.

31 Tr. at 1484:14-24.

Applicants boast that they "improved upon" initial commitments as a result of settlement negotiations with the Department of Defense ("DoD"). Applicants fail to state that while "negotiations" with the DoD ended in a settlement, DoD representatives closest to the details of the merger proposal, DoD witness Ralph Smith and lead negotiator Dr. Kay Davoodi. may not have been satisfied with the settlement.

> Q: Did Dr. Davoodi tell you that she had an agreement with Natalie Smith that the only conditions that would result in NextEra withdrawing the $60 million rate credit were, A, if HECO suffers financial distress due to an occurrence of extraordinary expense or, B, circumstances created a compelling need for a base rate case?
> A: No, she did not share that with me.
>
> Q: Did Dr. Davoodi tell you that she had, in an effort to compromise, given up on her position that the only conditions that would apply to the $60 million rate credit were, A, if HECO suffers financial distress due to an occurrence of an extraordinary expense or, B, circumstances created a compelling financial need for a base rate case?
> A: No...[32]

Furthermore, DoD does not represent all parties' interests[33] and is relying upon the Commission as a "safety net":

> And, so is it perfect? No. But we're also relying on the Commission, who is responsible for overseeing this. And we put a lot of emphasis on the responsibility of the Public Utility Commission to make sure that, if there were flaws that was presented, that we would view those flaws favorably and withdraw if necessary.[34]

In fact, DoD acknowledges that the "benefits" that they negotiated are "soft"

> Q: And do you know, apart from the revised commitments and the letter of intent, is there anything that the DoD, outside of that, stands to gain from its withdrawal?
> A: No, it doesn't. But I do want to elaborate, just if I may, on the letter of intent a little. You know, I went through that letter of intent. And, it's pretty soft. You know it's a soft-written letter because there was really nothing that was agreed to other than to continue discussions.[35]

---

32 Tr. at 3112:12-25, 3113:1-2.
33 Tr. at 3107:21-24.
34 Tr. at 3113:16-22.
35 Tr. at 3123:21-25, 3124:1-5.

Thus, Applicants' claims regarding improved commitments should be given the weight that it deserves – very little.

B. APPLICANTS FAIL TO ACCURATELY ASSESS BENEFITS FOR HAWAII'S ECONOMY.

Applicants neglected to estimate negative impacts in its economic analyses, resulting from reductions in the local workforce and spending on Hawaii businesses. Applicants assume no job losses in Hawaii for at least five years, despite only committing to two years with no workforce reductions and relied on nine other mergers to estimate savings despite the fact that those mergers involved significant job losses. Applicants conveniently focused solely on estimating positive impacts, most of which will be unverifiable once the Proposed Transaction is approved.

Applicants' benefit estimates are misleading. Applicants assert that the Proposed Transaction will create approximately $1 billion in benefits to Hawaii by double-counting more than $300 million. This inflated estimate is achieved by the unprecedented practice of adding projected savings from the Proposed Transaction to the share of that savings that is assumed to be re-spent in Hawaii's economy.

1. Applicants' Merger Savings Estimates Are Overstated.

As discussed in the Consumer Advocate's Opening Brief, Applicants' expanded merger savings claims have not been quantified with any precision. Applicants' witness John Reed initially claimed that his "first-phase identification and quantification of merger savings opportunities for the post-merger companies" was quantified by assuming "project-level savings of 10% of currently planned costs are reasonable to expect."

Mr. Reed's also discussed "debt cost savings" that he expected would, "...range from approximately $200,000 in Year 1 after the Proposed Transaction is in effect, ramping up to

savings of approximately $2.4 million in Year 5."[36] Mr. Reed's analysis concluded that, "...it is reasonable to expect at least $100 million merger savings over the five year study period."[37] No summary of these claimed savings was included in Applicants' Direct Testimony,[38] Opening Brief or presented during the evidentiary hearings. Applicants' response to CA-IR-303 candidly admits that:

> Complete estimates of annual costs to achieve merger savings, annual expense savings and annual capital cost savings in each available year after closing have not yet been developed.[39]

The Consumer Advocate's witness Michael Brosch characterized Applicants' direct savings estimates as "largely speculative and subject to significant future revision." The truth of the matter is that it is possible that a majority of the cost reductions that Applicants attribute to the Merger could be realized without the Merger. The Consumer Advocate's cross-examination of Applicants' witness Colton Ching confirmed that, at best, neither NextEra nor Hawaiian Electric Companies know the answer.

> Q: The "but for" case. But for the merger, what would -- let me start that again.
> If the merger is approved, we wouldn't know whether Hawaiian Electric on its own as a stand-alone basis could have achieved certain goals at the same time as NextEra or at a lower -- at the same cost with NextEra?
> A: Yes.[40]

The Consumer Advocate has often argued that the cost of service for the HECO Companies could and should be reduced. If any significant portion of the Merger benefits is attributable to

---

36 Applicants Exhibit-33, at 19-27.
37 Applicants Exhibit-33, at 34:3-6.
38 CA Exhibit-11, at 21:7-12.
39 CA Exhibit-11, at 16:1-10 (quoting Applicants' Response to CA-IR-303(a), as supplemented by Applicants on July 20, 2015).
40 Tr. at 1254:3-10.

efficiencies that could be achieved without the Merger, it would be improper to classify those savings as Merger related, and those savings should be passed on as rate relief to consumers.

In Rebuttal, Applicants doubled down on estimated merger savings, with Mr. Reed claiming, "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."[41] Applicants' updated claimed merger savings expanded to "nearly $1 billion in customer savings and other economic benefits in the first five years after the merger is consummated,"[42] an amount that the Consumer Advocate demonstrated to be dramatically overstated. Despite the Applicants' more expansive and incredible estimates of expected merger savings in responsive testimony, Applicants did not change the amount of rate credits that were proposed in the Application. Instead, Applicants have steadfastly limited potential direct customer rate credits to the $60 million amount originally offered,[43] an amount that would be clawed back by proposed RAM accruals and is undermined by other conditions that are detrimental to ratepayers.

Applicants' expanded merger savings estimate offered in rebuttal added $132.8 million of inflated value reflecting the amount of future base rate increases that would have been filed and granted during the proposed rate case moratorium.[44] Mr. Brosch explained, however, that this estimate is based upon a "faulty methodology and multiple flawed assumptions" showing that Mr. Reed's "estimate of outcomes from future rate cases is hopelessly overstated." Mr. Brosch

---

41 Applicants Exhibit-50, at 15:16-20.
42 Applicants Exhibit-36, at 59-60.

43 CA Exhibit-29, at 8:5-13.
44 Applicants' Exhibit-50, at 68.

reached an opposite conclusion, given favorable trends in actual and projected O&M expense at the utilities, stating:

> 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. 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.[45]

During the Consumer Advocate's cross-examination of Mr. Reed, Mr. Reed also stated that the $132 million is a rough estimate.

> Q: Neither you nor applicants have prepared a rate case test year calculation for each utility for each of the years of the rate case moratorium in preparing the $132 million estimate; is that fair?
> A: That's correct.

Applicants' newly claimed merger savings of $30 million of net O&M savings in year five (captioned "Non-fuel O&M Savings After Moratorium" in the table above) are also "illusory" because the only way for ratepayers to participate in such savings is if all three utilities simultaneously initiated rate case proceedings using a 2020 test year, resulting in new base rates effective early in 2020 to capture such savings.[46]

In responsive testimonies, Applicants also added a new $67.5 million value for avoided fuel costs enabled by the merger. 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 Hawaiian Electric Companies on their own or by employing third party consulting expertise (and without merging with NextEra).[47]

---

45 CA Exhibit-11, at 49-51; CA Exhibit-29, at 10-15 (footnote omitted).
46 CA Exhibit-29, at 17-18.
47 CA Exhibit-29, at 19-20 (citing Applicants' Confidential Response to CA-IR-414).

The largest element of claimed savings in Applicants' Responsive Testimony, is the $169.1 million of future return and depreciation recovery on reduced capital expenditures. This was based upon a "more generalized comparison of the capabilities of the Hawaiian Electric Companies and NextEra in the areas of supply chain, construction management and engineering" -- quantified by simply applying an assumed 10 percent savings rate to forecasted capital spending of $800 million in 2016 and 2017 across all three utilities and then $730 million in 2018 and $620 million in both 2019 and 2020.[48] This massive rate of capital spending is not actually planned by the Hawaiian Electric Companies and, 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.[49]

Of particular note was a representation by Applicants' witness Colton Ching's discussion about the savings projected for Hawaiian Electric Companies' "Smartgrid" project. During his cross-examination of witness Ching, Commissioner Champley noted that witness Ching's representation of a 4 percent savings, under the "merger scenario," for the Smartgrid project was in contrast to Mr. Reed's overall estimated 10 percent savings and questioned the existences of a merger related benefit. Commissioner Champley's questioning also pointed out how the estimated capital savings could potentially represent only the cushion built into estimation errors.

> Q: But in terms of cost savings, I believe it was, in broad terms, Witness Reed's testimony that there were -- NextEra would bring generally a 10 percent reduction in capital expenditures. And yet you've testified yesterday and today that on the smart grid project, the cost differential or benefit, if you will, from the joint effort is 4 percent. From my experience, 4 percent is well within the range of project estimate error. So it would seem, at least on the cost front, there's little if any benefit being derived from the joint effort.

---

48 CA Exhibit-29, at 21.

49 CA Exhibit-29, at 22-23.

The Consumer Advocate acknowledges that Applicants' Commitment 15 (Applicants Ex. 37A #15) intent to provide $2.5 million per year for four years attempts to address the public interest concerns. The concern, however, is 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.[50] Thus, without any commitment to consider extensions, the Consumer Advocate assumes that any established program will end after the four-year funding commitment. Thus, the Commitment is not a long-term commitment.

Applicants have indicated that the funding will occur over four years, even if the Applicant's rate moratorium ends,[51] but the real issue is whether the Applicants' linkage between the pre-funding commitment and the Applicants' rate-related commitments may not result in net benefits for Hawaii ratepayers because benefits from the proposed public interest funds might be subsumed by the detrimental effects of accepting the Applicants' other rate-related commitments. Applicants' witness Mr. Gleason testified that he is not aware of any effort to determine of rate impact.

> Q: And I apologize if you answered this question to -- if Mr. Gorak already asked you this question. Have you determined the ratepayer impact of the $30 billion investment?
> A: No. [52]

---

50 CA Exhibit-32, at 3-5.
51 Tr. at 736:7-12.
52 Tr. at 501:5-9.

2. Applicants' Proposed Merger Benefits to Ratepayers Are Not Guaranteed.

Applicants represented that no less than $60 million of customer savings over the four-year base rate case moratorium are guaranteed.[53] Unfortunately, this modest value grows slowly over four years, is not remotely guaranteed, and is further offset by other conditions and demands by the Applicants that undermine the already limited value of Applicants' rate plan. Numerous conditions negate any "guaranteed" benefits to customers. Commission counsel Tom Gorak confirmed this with Applicants' witness Eric Gleason through his cross-examination.

> Q: So I guess we could say that there are strings attached to your 60 million; is that correct?
> A: I think we could say there were conditions attached to it, yes.[54]

First, a rate case moratorium must remain in place in order for the Applicants' proposed rate credits continue and if any base rate case occurs during this period, rate credits would terminate prospectively.[55] Second, the Applicants' rate credits are tied to and conditioned on Commission acceptance of a bundle of other so-called "Customer Benefit and Rate Commitments" that include "the development of an incentive-based ratemaking construct" and "the adoption upon closing of the fuel cost incentive mechanism reflected in Applicants Exhibit-45."[56] Neither an incentive-based ratemaking construct nor a fuel cost incentive mechanism has been developed or described sufficiently in this proceeding to be implemented,[57] effectively cancelling any access to the customer rate credits. Finally, as an additional barrier to ratepayer participation in Applicants'

---

53 Applicants' Exhibit-36, at 61.
54 Tr. at 406:1-4.
55 Applicants Exhibit-37A, at 2 (Item #10 and Footnote #3).
56 Applicants Exhibit-37A, at 3 (Items #12 and 13).
57 Incentive-based ratemaking was considered in Docket No. 2013-0141, but not adopted by the Commission. See also CA Exhibit-29, at 65-68 and Tr. 420-424.

rate credits, the required rate case moratorium is also "subject to the conditions outlined in Applicants Exhibit-46."[58]

Applicants Exhibit-46 reveals the many "Updated Base Rate Moratorium Qualifications" ("Qualifications") that are prohibitively restrictive, rendering the moratorium element of Applicants' proposed rate plan and the corresponding $60 million in rate credits unworkable, including:

- The proposed Moratorium would "not apply" and would become unenforceable in the event any vaguely defined "financial distress" condition occurs, such as the incurrence of any "extraordinary expense" or if any "circumstances otherwise arise that create a compelling financial need."[59]

> Q: And if you look at the first qualification, the first qualification to the rate case moratorium is "if any of the Hawaiian Electric Companies suffers
> financial distress due to an occurrence of an extraordinary expense. Example, an expense caused by a tropical storm, an act of terrorism, et cetera." Is "financial distress" defined anywhere?
> A: No.[60]
>
> Q: And is "compelling financial need" defined anywhere?
> A: Again, subject to the caveat that I just mentioned, not here.
>
> Q: And do you know how Hawaiian Electric defines "compelling financial need"?
> A: I do not.[61]

- That there be "no material change in the current formulation of the decoupling mechanisms," including a list of seven specific other ratemaking provisions, even though changes to decoupling have already occurred in Commission Order

---

58 Applicants Exhibit-37A, at 2 (Item #9).
59 Applicants Exhibit-46, at 1 (Paragraph 1).
60 Tr. at, 504:4-11.
61 Tr. at 505: 2-10.

No. 32735 and possible changes to ECAC and REIP remain under consideration in Docket No. 2013-0141.[62]

> Q: Then there's a list of additional qualifications or conditions; isn't that right?
> A: Yes.
>
> Q: In fact, there's a third qualification that "there be no material change in the current formulation of the decoupling mechanism." Do you see where that's noted?
> A: Yes, I do[63]
>
> Q: And then you go through the various rate recovery mechanisms that all need to stay in place as a qualification for the rate case moratorium; isn't that right? It starts with No. 1?
> A: Yes, we are -- yeah, that is exactly right.[64]

- A condition that each of the utilities be "authorized to record revenues collected through the RAM Provision starting January 1 of each year of the stay-out period" which would increase recorded utility revenues above currently authorized levels and expose ratepayers to potentially higher costs in the event any accrued but uncollected RAM revenues exist at the time of a next rate case.[65]
- A condition requiring approval of the Hawaiian Electric Companies' newly proposed Standards and Guidelines for Eligibility of Projects for Cost Recovery through the RAM above the RAM Cap.[66]
- A condition that would allow rate changes if "authorized by legislation during the stay out period."[67]

---

62 Applicants Exhibit-46, at 1 (Paragraph 2 and Footnotes 1-3).
63 Tr. at 505:11-18.
64 Tr. at 506: 12-16.
65 Applicants Exhibit-46, at 2 and CA Exhibit-11, at 42-43.
66 Applicants Exhibit-46, at 1 (Footnote 2) and CA Exhibit-11, at 43.
67 Applicants Exhibit-46, at 2.

The Applicants' argument was clear, if the Commission makes any further changes to the RAM, REIP, the Hawaiian Electric Companies' proposed RAM above the RAM Cap mechanism, or ECAC within Docket No. 2013-0141 or if any instance of financial distress is experienced, the base rate case moratorium commitment is no longer valid.[68]

The Commission's decision is made even more challenging when trying to unwind Applicants' conditions that have been attached to some of their 95 commitments. While Applicants contend that they have offered "clear commitments,"[69] even the Applicants are unsure how the Applicants' conditions attached to the commitments apply and how they would be enforced. This uncertainty is highlighted by the many deferrals offered by Applicants' witnesses during the evidentiary hearing as well as the exchange between Mr. Gleason and Mr. Brillhante when discussing whether there were any conditions on the four-year $2.5 million per year funding commitment.

> Q: . . ."In response to these recommendations, the Applicants will establish a funding mechanism and prefund $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." Did I read that correctly?
> A: And it goes – yes. And it goes on.
>
> ...
>
> Q: Thank you. Yes or no: Is that fund only in effect if the four-year general base case moratorium remains in effect?
> A: No.
>
> Q: So your position is, over those four years, that $2.5 million added to that fund is guaranteed?
> A: That is my testimony. And I should say that I earlier misspoke and I described that as a six-year term, and it's – as it says here, it's a four-year term.
>
> ...
>
> A: Mr. Brillhante, can I start by apologizing to you and to the Commission. I made a mistake in our last conversation.
>
> I said that the—I hope this doesn't count against your time. I said that the 2 ½ million per year for four years was not linked to the rate stay-out, but actually

---

68 CA Exhibit-11, at 43.

69 Applicants' Opening Brief, at 10.

that was—I misspoke. If you look at how it's structured in the documents, it actually is linked to rate stay-out.[70]

This exchange is illustrative of how the conditions are not clear or easily understood since even Mr. Gleason, who was the policy witness representing NextEra's interests was unsure of what commitments and conditions were in place.

3. Applicants' Rate Proposals Are Potentially Harmful To Ratepayers.

Applicants' bundle of conditional rate credits and other suggested "Customer Benefit and Rate Commitments," as listed at numbered items 9 through 15 in Revised Applicants Exhibit-37A, are likely to be more costly to ratepayers than beneficial because the present rate levels of all three utilities should be reduced, before any multi-year moratorium is commenced, in compliance with the required triennial rate case updating of capital costs and non-fuel O&M expenses that was ordered by the Commission in Docket No. 2008-0274.[71] Applicants' willingness to simply freeze existing rates for four years suggests that present base rate levels are abundantly generous. Recent base rate filings for Hawaiian Electric and Maui Electric, in which the utilities proposed to forgo any base rate increase, also indicate present base rate levels are apparently more than adequate.[72]

Notably, Applicants have not demonstrated that present base rate levels are reasonable before proposing that such levels be frozen for at least four years. In fact, the Applicants urge no critical review of present rate and revenue levels, arguing that this Merger case should not become

---

70 Tr. at 735:16-22,736:2-12,819:10-18.

71 The Final Decision and Order filed on August 31, 2010 in Docket No. 2008-0274 states at page 73, "So that the commission and the Consumer Advocate have a regular opportunity to evaluate decoupling and re-calibrate RAM inputs using commission-approved values, the Hawaiian Electric Companies shall file staggered rate cases every three years, unless otherwise ordered by the commission, commencing as proposed in the Amended Joint Proposal, with HECO's 2011 test year rate case, followed by either MECO's or HELCO's test year rate cases of 2012 and then MECO's or HELCO's test year rate cases of 2013."

72 See Applications of Hawaiian Electric Company in Docket No. 2013-0373 and Maui Electric Company in Docket No. 2014-0318, filed on June 27, 2014, and December 30, 2014, respectively.

a "limited scope rate case."[73] This approach reflects an attempt to perpetuate presently excessive base rates, while keeping all near-term interest expense savings and any reductions in the cost of equity arising from the Merger for the sole benefit of shareholders. This is unacceptable because Applicants assert that the Merger is expected to enhance the utilities' credit position, improve access to capital, and reduce the costs of borrowing.[74] The Commission is aware that debt refinancing transactions by the Hawaiian Electric Companies have already occurred to produce interest expense savings not yet reflected in rate case proceedings where they can benefit ratepayers.[75] Capital cost updating is needed prior to commencing any rate case moratorium because all other individually significant elements of utility revenue requirement have been systematically updated through utility cost tracking mechanisms.[76]

Another concern is the Applicants' intent to expand accrual accounting treatment for RAM revenue increases, as an added condition for Applicants' rate plan and credits. This would amplify the problem caused by freezing presently excessive base rates, resulting in higher recorded revenues, beyond what is presently authorized, which is inconsistent with the concept of not changing the utilities' revenue requirement during a rate case moratorium.[77] The proposed accelerated accrual of RAM revenues would immediately claw back new revenues of at least $6 million per year, fully offsetting all of the first year of proposed rate credits.[78]

Even though their commitments are lacking, Applicants have asserted that additional conditions are unnecessary and would jeopardize the transaction. Applicants further contend that any additional conditions may exceed the scope of authority delegated by the change in control

---

73 See CA Exhibit-29, at 35 (quoting Mr. Reed's Responsive Testimony in Applicants Exhibit-50 (Applicants Exhibit-50, at 97)).
74 CA Exhibit-29, at 41.
75 Tr. at 1513:17-20.
76 CA Exhibit-29, at 42-44.
77 CA Exhibit-11, at 43; CA-Exhibit-29, at 39-40.
78 CA Exhibit-29, at 15-16.

statutes.[79] Applicants further contend that certain conditions, such as the Consumer Advocate's rate plan are attempting to establish a mini-rate case. Applicants' contentions in these regards unnecessarily and inappropriately make this proceeding more complex. Applicants have offered a rate plan and the Consumer Advocate's recommendations related to certain rate making issues are not seeking establish a mini-rate case, but seek to insure that the results of the Merger, if approved, would be more properly aligned with consumers' interests. The Consumer Advocate's recommended conditions seek to remedy the potential harm that might occur if the Merger was accepted as is. Thus, when the Applicants state that no other conditions should be imposed unless justified by potential "harm to the public interest fairly attributable to the proposed change in control,"[80] the Commission should find that the Consumer Advocate's recommended conditions are necessary to ensure that the public interest is protected and advanced.

4. Applicants Fail to Adequately Protect Ratepayers From Merger Costs.

Ratepayers will be exposed to the recovery of merger-related costs, as a result of significant transition costs, if the Merger is approved and consummated without an enforceable rate case moratorium. Specifically, certain costs characterized by Applicants as "...incurred to integrate or optimize processes, tools and/or technology to further improve operational efficiencies and lower costs" are intended to be treated as recoverable from ratepayers by the Hawaiian Electric Companies and NextEra.[81] The Consumer Advocate's concern is that, "the proposed moratorium cannot be relied upon to protect ratepayers from recovery of potentially large business integration expenses charged to the Hawaiian Electric Companies, which costs may exceed any resulting cost

---

79 Applicants' Opening Brief, at 70.
80 Applicants' Opening Brief, at 70.
81 CA Exhibit-11, at 67.

savings in the year incurred and potentially thereafter.[82] A specific condition was proposed by the Consumer Advocate to assure non-recovery of such costs.[83] Applicants, however, have not agreed to adopt this proposed condition.[84]

The Consumer Advocate is also concerned about several other types of new costs that the utilities would incur as a result of the proposed Merger, for which future rate recovery may be asserted. These include incentive compensation costs, NextEra corporate aviation expenses, NextEra named senior executive officer compensation and captive insurance affiliate premiums. An additional "cost" of the proposed transaction arises from the planned spinoff of American Savings Bank ("ASB") which has consistently provided positive taxable income on the HEI consolidated group federal income tax return, enabling the rapid realization of the utilities' Net Operating Loss ("NOL") positions. This income tax consolidation benefit has decreased the decoupling RAM Rate Base calculations of the utilities under present HEI ownership, through an agreed-upon exclusion from rate base of tax loss NOL deferred tax assets that are otherwise reflected on the utilities stand-alone books.[85] Specific merger conditions were proposed by the Consumer Advocate to mitigate the harm arising from these new costs in post-merger rate proceedings.[86] Applicants acknowledged the Consumer Advocate's concern with respect to incentive compensation, corporate aircraft and named executive officers at NextEra, but the newly offered commitments to not seek rate recovery of such costs notably include the phrase, "...until such costs are approved for recovery in rates," leaving ratepayers fully exposed to litigation and potential rate recovery of such costs prospectively.[87]

---

82 CA Exhibit-11, at 67-70.
83 CA Exhibit-11, at 70-72.
84 See Applicants Exhibit-37A, at 11 (Item #76) and CA Exhibit-29, at 70-73.
85 CA Exhibit-11, at 75-89.
86 CA Exhibit-11, at 91-92 (Conditions 7-11).
87 CA Exhibit-29, at 74.

With respect to the NOL carryforward matter, both Mr. Reed and Ms. Sekimura were unable to provide support for Mr. Reed's assertion that the NOL treatment, recognizing the ASB tax loss realization benefits, agreed upon by the utilities in recent decoupling filing, would somehow now "almost certainly" become a violation of the Internal Revenue Code.[88] Thus, the Consumer Advocate views the proposed Merger as creating ratepayer exposure to significant new costs and risks that are caused by the Merger, for which Applicants offer no meaningful mitigating conditions or commitments.

IV. APPLICANTS HAVE FAILED TO DEMONSTRATE FITNESS, WILLINGNESS AND ABILITY TO PROVIDE RELIABLE ELECTRIC SERVICE AT THE LOWEST REASONABLE COST FOR BOTH SHORT AND LONG TERM.

A. THE PROPOSED TRANSACTION WILL NOT RESULT IN MORE AFFORDABLE ELECTRIC RATES FOR THE CUSTOMERS OF THE HAWAIIAN ELECTRIC COMPANIES.

Applicants failed to demonstrate that they will be able to provide electric service at the lowest reasonable cost in either the short or long term for Hawaii's ratepayers. Despite Applicants' representation of substantial cost savings and related benefits, witness Moray Dewhurst testified that there would be no immediate decrease in customer rates.

> Q: So do you agree that utility customer rate levels should be immediately reduced as a condition of merger approval?
> A: No.[89]

The record merely reflects preliminary and vastly overstated estimates of potential future Merger savings, including only small and temporary rate credits for Hawaii ratepayers that are then clawed back through offsetting demands for RAM accruals and other rate treatments, all

---

88 See Applicants Exhibit-94, at 19-20 and Tr. at 1515:1-12 and Tr. at 1763-1764.
89 Tr. at 2389:24-25, 2390:1-2.

during a base rate case moratorium period that may likely prove to be unenforceable. Applicants' witness Tayne Sekimura confirmed that any cost savings determinations were just estimates.

> Q: Much of the Applicants' position depends on cost savings. And yet you have not, in this application or in testimony that I have read, presented a concrete way in which we can analyze those savings; is that correct?
> A: That hasn't been developed, but there are estimates of what that savings could yield. It's not specific; it's an estimate.[90]

On behalf of Applicants', witness Gleason also offered no insight on comparative savings.

> Q: Okay. I asked this question of Mr. Oshima several times, and I will ask it again here. How does the Commission determine whether or not these savings would have occurred if the merger were not approved?
> A: So I think that -- I'm told that that is doable. I personally haven't worked through that in detail.

Applicants have also offered no evidence to show that future post-merger corporate services costs provisioned through Florida Power and Light or NextEra will be lower than those currently provided by HEI or self-provisioned by the Hawaiian Electric Companies. Applicants also failed to adequately identify or quantify the specific services or related costs that might be billed to the Hawaiian Electric Companies post-merger.

The evidence fails to reflect any firm commitments by Applicants that rates will be lower, on a post-merger basis, than they would have been if the Merger was not approved.

B. THE PROPOSED TRANSACTION IS UNLIKELY TO IMPROVE HAWAIIAN ELECTRIC COMPANIES' MANAGEMENT AND PERFORMANCE.

NextEra has failed to provide a compelling demonstration or support of its ability to embrace and operate within Hawaii's cultural, business, regulatory and political environments.

---

90 Tr. at 1449:5-12.

The Hawaiian Electric Companies will need to "invent the future" in partnership with all Hawaii stakeholders in order to achieve 100% RPS. Consumer Advocate witness Ian Chan Hodges emphasized that most inventors who have experienced commercial success recognize that the front line workers, who make, use, sell, or otherwise utilize their inventions are invaluable allies in the hard work of continuous innovation and periodic reward of game-changing breakthroughs.[91] Applicants' proposed governance structure, however, would restrict all important financial and operational decisions to being made in Florida, far from the "front line workers" who will carry out the day-to-day work of transforming Hawaii's electric system.[92] A reflection of this process was clearly evident. Despite the Consumer Advocate's information requests directed at NextEra CEO James Robo, Applicants' witness Moray Dewhurst admitted that Mr. Robo chose not to appear before the Commission because Mr. Dewhurst advised Mr. Robo that his attendance was not necessary.

> Q: That, in your belief or understanding, it was not important or necessary for him to appear before this Commission.
> A: I did not believe it was necessary for him to appear before this Commission in order to provide the Commissioners with the evidence that they need to make a reasoned judgment. That was my recommendation.[93]

Upon further cross-examination by Chairman Iwase, Mr. Dewhurst admitted that, as Mr. Robo's representative, Mr. Dewhurst did not visit any Hawaiian Electric Company substations, did not take tours, and did not meet workers "who wear hard hats."[94] Understanding and embracing Hawaii's values and business culture are critical to a successful integration. However, the Consumer Advocate contends that Applicants have not clearly demonstrated that NextEra, as a parent company, would represent a good fit and smoothly integrate into Hawaii's economy and

---

91 CA Exhibit-5, at 14.
92 Tr. at 620:5-9.
93 Tr. at 2387:9-18.
94 Tr. at 2645:14 – 2646:9.

culture and address the public's concerns and ameliorate the existing issues with public perception of the Hawaiian Electric Companies as well as the fractured relationships with customers and the customers' growing lack of trust in the Hawaiian Electric Companies.

Further, Applicants' commitment to include local residents on the boards of Hawaiian Electric Holdings ("HEH") and Hawaiian Electric utility Holdings ("HEUH") is illusory. Although it would appear to be Applicants' attempt to inject local business knowledge into the proposed merged structure, ultimately, HEH or HEUH would not make any substantive financial or operational decisions for HECO. As proposed, the local residents on these boards will have no direct mechanism to use their local knowledge to affect the utility's strategy because those decision will be decided in Florida by Mr. Robo.

Chairman Iwase asked Applicants' witness Mr. Gleason: "... why should I trust you? Why should I trust NextEra?"[95] The Hawaiian Electric Companies have lost the public's trust and the Commission must determine whether the proposed Merger will result in the improvement of the Hawaiian Electric Companies' management and performance and whether Applicants will be able to restore that trust with consumers, regulators, legislators, and other stakeholders. The Consumer Advocate asserts that Applicants have not sufficiently demonstrated the ability to restore the public's trust.

C. THE PROPOSED TRANSACTION IS UNLIKELY TO IMPROVE THE FINANCIAL SOUNDNESS OF THE HAWAIIAN ELECTRIC COMPANIES.

Applicants referenced a 25 basis point debt cost reduction due to a credit rating improvement should the Merger be approved. However, only one of the three credit rating

---

95 Tr. at 1038:15-17.

agencies indicated that the Hawaiian Electric Companies' debt rating would be increased if the Merger proceeds: Standard & Poor's Rating Service. The two other major credit rating agencies indicated that the Hawaiian Electric Companies' debt rating would not change. S&P utilizes a different type of rating system than Moody's and Fitch, indicating only that NextEra was considered to have a higher credit rating than HECO's current parent, HEI. The Applicants were unable to produce any evidence that the acquisition of a lower-rated entity by a higher-rated parent always results in lower debt costs for the lower-rated entity following acquisition.[96]

Commissioner Champley, in his cross-examination of Mr. Gleason,[97] determined that if the 25 basis point debt cost improvement were accurate, *and* if the Hawaiian Electric Companies refinanced 100% of its currently outstanding debt all at once, then it would only save about $4 million annually. It is unlikely, of course, that all of the Hawaiian Electric Companies' debt would or could be re-financed at once and Ms. Sekimura estimates a much more modest $200,000 per-year debt cost savings if the Hawaiian Electric Companies' cost of debt is reduced by 25 basis points.[98] Mr. Hill notes that that hypothetical debt cost savings represents approximately 0.007% of the Hawaiian Electric Companies' revenues.[99]

---

96 CA Exhibit-7, at 18 and 19.
97 Tr. at 3047-48.
98 Applicants Exhibit-28, at 26.
99 CA Exhibit-7, at 21.

V. APPLICANTS RING FENCING PROTECTIONS ARE NOT ADEQUATE.

Applicants' offered ring fencing protections does little to protect HECO from any financial distress that may be experienced by NextEra. Applicants' offer to obtain, or make best efforts to do what's necessary to obtain, a non-consolidation opinion is moot if S&P raises HECO's credit rating, as anticipated, due to the proposed Merger being approved. The Applicants' other offer to seek a non-consolidation letter is conditioned on bond ratings downgrades of NextEra by two of the three major ratings agencies, at which point it is very unlikely any corporate entity could get such a letter, no matter what ring fencing efforts they undertook.

The Applicants offer to create HEUH as a vehicle to assist ring-fencing, but no party asked for the establishment of HEUH. HEUH will not make any operating decisions and its sole stated purpose is to separate the utility from unregulated subsidiaries under HEH. There was no evidence in the record, however, that HEH intends to undertake new unregulated investments. Further, Applicants have not demonstrated that more rigorous ring fencing would defeat a possible S&P upgrade of HECO's bond rating with that ratings agency, other than witness Ellen Lapson's "gut feeling".[100] In contradiction to her testimony on that subject in these proceedings, Lapson approved of more rigorous ring fencing in the recent Exelon-Pepco merger proceedings.[101] Similarly, in their Opening Brief, Applicants point to language in the Washington State Utilities and Transportation Commission decision approving the merger of Macquarie and Puget Energy,[102] but the ring fencing in that merger was more rigorous than Applicants are offering here, and

100 Applicants Ex. 56, page 13 at line 15 to page 14 at line 13.
101 Consumer Advocate Hearing Ex. 48.
102 Applicants Opening Brief, at 74.

actually similar to ring fencing measures adopted in the Exelon-Pepco merger[103] and proposed by the Consumer Advocate in these proceedings[104].

VI. APPLICANTS' CONDITIONS FAIL TO SUPPORT A CONCLUSION THAT THE PROPOSED TRANSACTION IS IN THE INTEREST OF HAWAII'S RATEPAYERS.

The Consumer Advocate disagrees with Applicants' belief that Exhibit-37A contains a comprehensive and voluntary set of conditions that will provide extensive benefits and service improvements for the Hawaiian Electric Companies' customers and the State of Hawaii and no other conditions are necessary.[105]

> Applicants cite a Washington State Utilities and Transportation Commission ("WSUT") order concluding that Puget Holdings LLC's ("Puget Holdings'") acquisition of Puget Sound Energy, Inc. ("PSE") was consistent with the public interest.[106] Applicants reply upon the WSUT majority's comments regarding that Commission's insecurities about their own authority and ability to protect the public interest.[107]

Applicants, however, conveniently quote very selectively from the WSUT's analysis in order to support Applicants' position. Far from being substantively similar to Applicants Exhibit 37A, the Multiparty Settlement Stipulation approved by the WSUT in Docket No. U-072375 includes provisions that Applicants find objectionable in this proceeding.

---

103 Tr. at 2056.

104 Consumer Advocate Ex. 7, at 79-80.

105 Applicants' Opening Brief, at 69 (record citation omitted).

106 Order 08 Approving And Adopting Settlement Stipulation, Authorizing Transaction Subject To Certain Conditions, Docket No. U-072375 (Wash. State Util. and Transp. Comm'n) (served on Dec. 10, 2008).

107 Applicants' Opening Brief, at 76 (quoting Order 08, Docket No. U-072375, WSUT, at 106 (taken from the Responsive Testimony of Applicants' Witness John J. Reed, Applicants Exhibit-50, at 150: 9-17)).

VII. CONCLUSION.

The Merger represents the most significant event that would affect Hawaii's energy industry, Hawaii's economy (which relies on affordable, reliable energy), and Hawaii's residents. The Merger also represents a potentially powerful catalyst that could positively (or negatively) affect Hawaii's clean energy transition efforts. As opposed to providing the Commission and parties their best efforts and offer from the beginning, the Applicants have not taken advantage of the opportunities to establish a good first impression, have failed to meet their burden of proof that the Merger will be in the public interest and contend that the Merger must be approved in an "as is" condition.

The Consumer Advocate conducted analyses that addressed the issues and concerns with the Merger including, but not limited to, the demonstration that many of the Applicants' commitments only represent the status quo and does not support a finding of substantial net benefit. The Consumer Advocate has also provided the analyses and reasoning why the Consumer Advocate's recommended conditions would support the Commission's ability to determine that the public interest standard would be met. Upon adoption of the Consumer Advocate's conditions, the customers' and Hawaii's interests would be more certain to realize in the benefits that would be likely to occur as a result of the Merger instead of allowing shareholders to primarily benefit from the Merger.

On page 69 of Applicants' Opening Brief, they state that "[t]hese are the conditions upon which Applicants are willing to proceed and to provide the extensive benefits and service improvements for the Hawaiian Electric Companies' customers and the State of Hawai'i. No other conditions are necessary or should be ordered." Ultimately, it is the Commission's decision whether Applicants' have met their burden of proof and whether sufficient net benefits will be

received by Hawaii and its consumers. The Consumer Advocate and other parties have highlighted the many shortcomings of the Applicants' commitments. Applicants have taken the position that it is their way or no way. Thus, it appears that the Commission is left with only one option – the Commission must deny the Merger.

DATED: Honolulu, Hawaii, May 2, 2016.

Respectfully submitted,

By _____
JON S. ITOMURA
LANE H. TSUCHIYAMA
EDWARD M. KNOX
Attorneys for the
Division of Consumer Advocacy
Department of Commerce and
Consumer Affairs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S POST-EVIDENTIARY HEARING REPLY BRIEF** was duly served upon the following parties by electronic service pursuant to HAR § 6-61-21(d).

JOSEPH P. VIOLA
VICE PRESIDENT, REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
VICE PRESIDENT
HAWAII ELECTRIC LIGHT COMPANY, INC.
MAUI ELECTRIC COMPANY, LIMITED
P.O. Box 2750
Honolulu, Hawaii 96840

DOUGLAS A. CODIGA, ESQ.
SCHLACK ITO, A LIMITED LIABILITY LAW COMPANY
TOPA FINANCIAL CENTER
745 Fort Street, Suite 1500
Honolulu, Hawaii 96813

Attorneys for NextEra Energy, Inc.

DOUGLAS S. CHIN
ATTORNEY GENERAL OF HAWAII
DEBORAH DAY EMERSON
GREGG J. KINKLEY
DEPUTY ATTORNEYS GENERAL
DEPARTMENT OF THE ATTORNEY GENERAL
STATE OF HAWAII
425 Queen Street
Honolulu, Hawaii 96813

Attorneys for the Department of Business, Economic Development, and Tourism

DOUGLAS S. CHIN
ATTORNEY GENERAL OF HAWAII
DEBORAH DAY EMERSON
BRYAN C. YEE
DEPUTY ATTORNEYS GENERAL
OFFICE OF THE ATTORNEY GENERAL
STATE OF HAWAII
425 Queen Street
Honolulu, Hawaii 96813

Attorneys for the Office of Planning, State of Hawaii

DEAN T. YAMAMOTO
CARLITO P. CALIBOSO
WIL K. YAMAMOTO
TYLER P. MCNISH
YAMAMOTO CALIBOSO
A LIMITED LIABILITY LAW COMPANY
1099 Alakea Street, Suite 2100
Honolulu, Hawaii 96813

WILLIAM K. MEHEULA, III
SULLIVAN MEHEULA LEE, LLLP
TOPA FINANCIAL CENTER
745 Fort Street Mall
Honolulu, Hawaii 96813

Attorneys for The Gas Company, LLC, dba Hawaii Gas

RICHARD WALLSGROVE
PROGRAM DIRECTOR
BLUE PLANET FOUNDATION
55 Merchant Street, 17th Floor
Honolulu, Hawaii 96813

MOLLY A. STEBBINS
CORPORATION COUNSEL
WILLIAM V. BRILHANTE, JR.
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII
101 Aupuni Street, Suite 325
Hilo, Hawaii 96720

PATRICK K. WONG
CORPORATION COUNSEL
MICHAEL J. HOPPER
DEPUTY CORPORATION COUNSEL
COUNTY OF MAUI
200 South High Street
Wailuku, Maui, Hawaii 96793

ROBIN KAYE
FRIENDS OF LANA`I
P.O. Box 631739
Lana`i City, Hawaii 96763

DAVID J. MINKIN
BRIAN T. HIRAI
PETER J. HAMASAKI
McCORRISTON MILLER MUKAI MacKINNON LLP
Five Waterfront Plaza, 4th Floor
500 Ala Moana Boulevard
Honolulu, Hawaii 96813

Attorneys for Hawaii Island Energy Cooperative
and Kauai Island Utility Cooperative

CHRIS MENTZEL
CEO
HINA POWER CORP
P. O. Box 158
Kihei, Hawaii 96753

COLIN A. YOST, ESQ.
1003 Bishop Street, Suite 2020
Honolulu, Hawaii 96813

Attorney for Hawaii PV Coalition

WARREN S. BOLLMEIER II
PRESIDENT
HAWAII RENEWABLE ENERGY ALLIANCE
46-040 Konane Place 3816
Kaneohe, Hawaii 96744

RICK REED
DIRECTOR
HAWAII SOLAR ENERGY ASSOCIATION
761 Ahua Street
Honolulu, Hawaii 96819

HENRY Q CURTIS
TREASURER
KA LEI MAILE ALI'I HAWAIIAN CIVIC CLUB
P.O. Box 37313
Honolulu, Hawaii 96837

HENRY Q CURTIS
VICE PRESIDENT FOR CONSUMER ISSUES
LIFE OF THE LAND
P.O. Box 37158
Honolulu, Hawaii 96837

THOMAS L. TRAVIS
VICE-PRESIDENT
PUNA PONO ALLIANCE
RR 2 Box 3317
Pahoa, Hawaii 96778

ERIK KVAM
PRESIDENT
RENEWABLE ENERGY ACTION COALITION
OF HAWAII, INC.
1110 University Avenue, Suite 402
Honolulu, Hawaii 96826

ISAAC H. MORIWAKE
KYLIE W. WAGER
EARTHJUSTICE
850 Richards Street, Suite 400
Honolulu, Hawaii 96813

Attorney for Sierra Club

BRUCE NAKAMURA
JOSEPH A. STEWART
AARON R. MUN
KOBAYASHI, SUGITA & GODA
999 Bishop Street, Suite 2600
Honolulu, Hawaii 96813

Attorneys for SunEdison, Inc.

SANDRA-ANN Y.H. WONG
ATTORNEY AT LAW, A LAW CORPORATION
1050 Bishop Street, #514
Honolulu, Hawaii 96813

Attorney for SunPower Corporation and
Tawhiri Power LLC

JAMES M. CRIBLEY
MICHAEL R. MARSH
CASE LOMBARDI & PETTIT
Mauka Tower, Pacific Guardian Center
737 Bishop Street, Suite 2600
Honolulu, Hawaii 96813-3283

Attorneys for Ulupono Initiative LLC

JASON KUZMA
MARK QUEHRN
PERKINS COE LLP
The PSE Building
10885 NE 4th Street, Suite 700
Bellevue, Washington 98004

Attorneys for Ulupono Initiative LLC

TIM LINDL
KEYES, FOX & WIEDMAN LLP
436 14th Street, Suite 1305
Oakland, California 94612

Counsel to The Alliance for Solar Choice

DR. KAY DAVOODI
UTILITIES RATES AND STUDIES OFFICE
NAVFAC HQ
1322 Patterson Avenue S.E. Suite 1000
Washington, DC 20374-5065

JAMES J. SCHUBERT
ASSOCIATE COUNSEL
NAVAL FACILITIES ENGINEERING COMMAND
PACIFIC (09C)
JBPHH, HI 96860-3134

GREGGORY L. WHEATLAND
JEFFERY D. HARRIS
ELLISON, SCHNEIDER & HARRIS L.L.P.
2600 Capitol Avenue, Suite 400
Sacramento, CA 95816

DON J. GELBER
JONATHAN B. GELBER
CLAY CHAPMAN IWAMURA PULICE & NERVELL
700 Bishop Street, Suite 2100
Honolulu, HI 96813

Attorneys for AES Hawaii, Inc.

DATED: Honolulu, Hawaii, May 2, 2016.