

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of ----- )  
 )  
 PUBLIC UTILITIES COMMISSION )  
 )  
 Instituting a Proceeding to )  
 Investigate the Implementation )  
 Of Feed-in Tariffs. )  
 \_\_\_\_\_ )

DOCKET NO. 2008-0273

ORDER APPROVING FIT TIERS 1 AND 2 TARIFFS,  
STANDARD AGREEMENT, AND QUEUING AND INTERCONNECTION PROCEDURES

AND

CONCURRING OPINION OF LESLIE H. KONDO, COMMISSIONER

PUBLIC UTILITIES  
COMMISSION

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FILED

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ORDER APPROVING FIT TIERS 1 AND 2 TARIFFS,  
STANDARD AGREEMENT, AND QUEUING AND INTERCONNECTION PROCEDURES

By this Order, the commission approves (1) proposed feed-in tariffs ("FIT") for Tier 1 and Tier 2 renewable energy generators, which includes applicable pricing, other terms and conditions, and a standard form of contract for the FIT program adopted by the commission;<sup>1</sup> and (2) proposed queuing and interconnection procedures for Tier 1 and Tier 2 of the FIT program.

More particularly, the commission hereby (1) approves the Schedule FIT for Tier 1 and Tier 2 Eligible Renewable Energy Generating Facilities ("Tariffs") and Schedule FIT Standard Agreement for Tier 1 and Tier 2 ("Agreement") that were filed by

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<sup>1</sup>Decision and Order, filed on September 25, 2009 ("Decision and Order").

the HECO Companies<sup>2</sup> on August 5, 2010, as revised on August 12, 2010;<sup>3</sup> and (2) adopts "Hawaiian Electric Companies Feed-In Tariff (FIT) Program Queuing and Interconnection Procedures for Tiers 1 and 2," which were attached to the HECO Companies' comments on the Independent Observer's ("IO") Status Report dated July 29, 2010 ("Status Report"), filed on August 18, 2010 ("Q&I Procedures").

The commission acknowledges the extensive discovery, comments, and input provided by the Parties and IO relating to the Tariffs, Agreement, and Status Report, and there may be a multitude of alternative ways of implementing FIT and virtually unlimited adjustments that could theoretically be made to the program. In the commission's view, however, none of the issues raised by the Parties and IO appear to be fatal flaws that warrant any further delay in the development and implementation of the FIT program. The commission believes the better course is to proceed, learn from experience, and make any necessary changes and improvements upon the commission's next opportunity to review the FIT program in two years. Thus, concomitant with the commission's approval of the HECO Companies' Tariffs, Agreement, and Q&I Procedures in this Order for

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<sup>2</sup>"HECO Companies" refers to Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), and Maui Electric Company, Ltd. ("MECO").

<sup>3</sup>To assist in the review of the Agreement, the HECO Companies filed a revised draft of the Agreement on August 12, 2010 indicating certain non-substantive modifications to the Agreement. The commission approves the Agreement as revised on August 12, 2010.

Tier 1 and Tier 2,<sup>4</sup> the HECO Companies are instructed to refile their Tariffs, incorporating the Q&I Procedures, within five days of the date of this Order, and the Tariffs shall take effect two days after filing as ordered herein.

I.

Procedural Background

On September 25, 2009, the commission issued its Decision and Order in this docket that set forth general principles, summarized as follows, for the implementation of FITs in the HECO Companies' service territories:

For the initial FIT, there will be rates for photovoltaic ("PV"), concentrated solar power ("CSP"), onshore wind, and in-line hydropower projects up to 5 MW depending on technology and location. There will also be a

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<sup>4</sup>The following table depicts the project size tiers for the initial FIT:

<b>Tier</b>	<b>Project Size</b>
1	0-20 kW on all islands
2	Greater than 20 kW and up to and including:  PV: 500 kW on Oahu, 250 kW on Maui and Hawaii, and 100 kW on Lanai and Molokai;  CSP: 500 kW on Oahu, Maui, and Hawaii and 100 kW on Lanai and Molokai;  In-line hydropower and onshore wind: 100 kW on all islands
3	Greater than Tier 2 maximums and up to and including the lesser of 5 MW on Oahu and 2.72 MW on Maui and Hawaii or 1% of the system peak load from the previous year, except that wind generation is precluded on Maui and Hawaii

Decision and Order at 45.

"baseline" FIT rate to encourage other renewable energy technologies. Net energy metering ("NEM"), competitive bidding, negotiated power purchase agreements ("PPAs"), Schedule Q, and avoided cost offerings will continue to exist as additional and complementary mechanisms to provide multiple avenues for the procurement of renewable energy.

FIT rates will be based on the project cost and reasonable profit of a typical project. The rates will be differentiated by technology or resource; size, and interconnection costs; and will be levelized. The FIT program will be reexamined two years after it first becomes effective and every three years thereafter.<sup>5</sup>

Regarding the reexamination of FITs after two years of implementation, the commission stated:

The commission . . . will direct a reexamination of the FIT two years after it becomes effective. Also referred to as a FIT Update by the parties, the periodic reexamination may focus on updating tariff pricing, applicable technologies, project sizes, any other matters relevant to the FIT, including queuing and interconnection procedures, curtailment compensation, and non-rate terms and conditions.<sup>6</sup>

In addition, the commission ruled that tariffs for the FIT program, including specific FIT rates, shall be filed with the commission in the next, tariff phase of the proceeding.<sup>7</sup>

On October 29, 2009, the commission issued an Order Setting Schedule to govern the remainder of the proceeding.

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<sup>5</sup>Decision and Order at 1-2.

<sup>6</sup>Id. at 98.

<sup>7</sup>See id. at 2.

On January 7, 2010, Clean Energy Maui LLC ("CEM") and Zero Emissions Leasing LLC ("Zero Emissions") jointly filed Proposed Tiers 1 and 2 Tariffs, and the HECO Companies filed their Schedule FIT Tier 1 and Tier 2 Tariff and Agreement. The Parties filed comments on these filings on January 21, 2010.

By order issued on January 28, 2010, the commission approved the contract between HECO and the IO, Accion Group - Harold T. Judd, for the oversight of the queuing process for FIT projects, as described in the Decision and Order.

On February 1, 2010, CEM and Zero Emissions jointly filed Proposed Queuing and Interconnection Procedures, and the HECO Companies filed their Report on Queuing and Interconnection Procedures.

In reports regarding reliability standards filed in February 2010, the HECO Companies "proposed to temporarily defer interconnection of additional distribution level [distributed generation] resources on Maui, Hawaii Island, Molokai, and Lanai until additional studies could be conducted and mitigation measures employed to address concerns on grid reliability and excess energy curtailment."<sup>8</sup> Specifically, the HECO Companies requested that the commission convene a Reliability Standards Working Group ("Working Group") and Technical Support Group ("TSG") to examine grid reliability and renewable integration on the HECO Companies' systems ("Reliability Proposal").

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<sup>8</sup>Letter dated and filed February 26, 2010, from the HECO Companies to the commission, at 1.

On February 4, 2010 and February 8, 2010, CEM/Zero Emissions and Blue Planet Foundation ("Blue Planet"), respectively, filed proposed reliability standards. Thereafter, the Parties conducted discovery, and filed comments, on the proposed queuing and interconnection procedures, reliability standards, and the HECO Companies' Reliability Proposal.

In February to March 2010, the commission issued, and the Parties responded to, information requests pertaining to FIT Tiers 1 and 2 that were prepared by the commission's consultants.

On July 30, 2010, the IO's Status Report was filed in the docket. The Status Report notes that the Parties engaged in a collaborative process, facilitated by the IO, to discuss how best to effectuate the FIT program. The Status Report further mentions that, while consensus was reached on some issues, outstanding unresolved issues among the Parties remain.

Pursuant to a request by the IO, on August 5, 2010, the HECO Companies filed revised Tariffs and the Agreement that had been updated since initially filed in January 2010 to reflect discussions facilitated by the IO with the Parties.<sup>9</sup>

The Parties filed comments on the Status Report, Tariffs, and Agreement on August 18, 2010. The HECO Companies attached their Q&I Procedures to their comments on the Status Report.

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<sup>9</sup>See supra note 3.

By order issued on August 26, 2010, the commission approved the HECO Companies' Reliability Proposal, as modified by the commission's approval of a Technical Review Committee ("TRC") that will function to provide independent technical review of reliability studies for the commission. Within thirty days of the order, the Parties were directed to file a stipulated procedural schedule to govern the remainder of the reliability portion of the proceeding.

Consistent with the commission's August 26, 2010 order, on September 27, 2010, several of the Parties filed a stipulated procedural schedule, and Zero Emissions separately filed its own proposed Supplemental Procedural Order, for the commission's review and approval.

## II.

### Discussion

As outlined above, since the issuance of the commission's Decision and Order in September 2009, the Parties have filed extensive comments, and conducted discovery, on the proposed Tier 1 and Tier 2 tariffs; reliability standards, including the HECO Companies' Reliability Proposal; and the queuing and interconnection procedures. It appears from the Status Report that the Parties have also engaged in lengthy discussions with the IO about these matters. The commission appreciates the Parties' and the IO's contributions to the record

and this process of establishing initial implementation of the FIT.<sup>10</sup>

Based on the extensive record before it, the commission by this Order approves the HECO Companies' Tariffs, filed on August 5, 2010, and Agreement, as revised on August 12, 2010, and commences the FIT program immediately for Tiers 1 and 2. The Tariffs appear consistent with the commission's prior orders in this docket, and reflect a reasonable first attempt at the FIT. In addition, the Q&I Procedures attached to the HECO Companies' comments on the IO's Status Report, filed on August 18, 2010, appear to establish a reasonable queuing and interconnection process for the initial implementation of the FIT program.

The commission's August 26, 2010 order in this docket establishes the Working Group, TSG, and TRC, and these groups, along with the HECO Companies' ongoing responsibility to maintain

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<sup>10</sup>The concurring opinion of Commissioner Kondo criticizes the IO for acting beyond the scope of work prescribed by its contract and commission order. The commission disagrees. The scope of work contains another paragraph (not quoted in the concurring opinion) recognizing the various contracting mechanisms available to renewable energy sellers (competitive bidding, FIT, power purchase agreements, net-energy metering, Schedule Q, standard interconnect agreements), and that the IO will assist the HECO Companies "with the development of queuing procedures that fairly and transparently govern power procurement and interconnection and avoid unfair advantages that can be gained b[y] developers." Attachment A - Scope of Work (Revised). To imply that the development and oversight of a FIT queuing and interconnection process should be done in a vacuum with no consideration of these other procurement mechanisms and their possible combined effects on system reliability is simply wrong. The IO and the Parties to the docket are well aware of the reliability standards process that is underway. That does not mean those unresolved issues should be ignored in the decision we make today.

system reliability, should be sufficient to address the various reliability issues as they may arise during the implementation of the FIT. In this order, the commission is adopting the HECO Companies' proposed Tariffs, Agreement, and Q&I Procedures for this initial FIT period. The primary responsibility for maintaining the systems' reliability, while implementing the FIT program, remains with the HECO Companies.

The Parties and the IO appear to have raised valid issues during the tariff review process, but there generally is insufficient information on record to incorporate cohesive and comprehensive changes to the tariffs that would resolve the issues that they raised. The commission declines to make changes to the tariffs on a piece-meal basis, since changes to one section of the tariffs can impact the provisions in other sections. While there is some validity to the issues that have been raised, none appear to be fatal flaws that should further delay development of the FIT program. Rather than delaying implementation of FITs in an attempt to resolve all of the issues that were raised, the commission believes the better course is to proceed and learn from experience.

As discussed above, implementation of the Tariffs initiates a two-year review cycle, and the Decision and Order specifies the parameters for reexamination of the Tariffs in the interim.<sup>11</sup> The HECO Companies and the Parties are directed to

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<sup>11</sup>See Decision and Order at 98-100. Although the Decision and Order precludes most changes to the Tariffs in the interim, the provisions in the Tariffs that reserve the right to make

attempt to reach consensus on the resolution of any issues that become relevant during implementation of the FIT program, and to present to the commission any changes to the Tariffs, Agreement, and Q&I Procedures they can agree upon at the end of the two-year cycle.

The Parties disagree on an implementation schedule for the FIT. Generally, developers seek immediate implementation of the FIT Tiers, and the HECO Companies and the IO support a "walk before you run" approach. The IO's suggested FIT implementation schedule includes various release dates for portions of Tiers 1 and 2, with implementation on Oahu commencing two weeks from the date of the commission's decision and order, and implementation on the HELCO and MECO grids commencing four weeks thereafter.<sup>12</sup> The commission understands the reasoning for the various release dates suggested by the IO, but believes that the numerous steps proposed in the extended implementation schedule may prove confusing for developers. On this basis, the commission adopts a simplified version of the IO's suggestions, with implementation of all of Tiers 1 and 2 commencing on Oahu two weeks from the date of this Order, and on the HELCO and MECO systems four weeks thereafter. The HECO Companies are directed to implement Tiers 1 and 2 pursuant to this schedule. The commission recognizes that there may be unforeseen issues that will need to be resolved and there may be resource constraints at the HECO Companies that may

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changes under certain circumstances (e.g., implementing a commission directive), appear reasonable.

<sup>12</sup>See Status Report at 17-18.

require more time to implement FIT Tiers 1 and 2. (and if so the HECO Companies should advise the commission accordingly). Nonetheless, the commission prefers that the HECO Companies, and if necessary the commission, address such issues as needed, rather than delay the implementation of the FIT any further.

The commission, however, reiterates that, while the commission approves herein the FIT implementation schedule as well as the HECO Companies' Tariffs, Agreement, and Q&I Procedures, ultimate responsibility for the reliability of the systems is on the HECO Companies. The commission recognizes that system constraints and reliability concerns may currently preclude the addition of certain projects on the HELCO and MECO systems, and expects the HECO Companies to report to the commission if and when these issues arise.<sup>13</sup> With respect to implementation of Tiers 1 and 2 on the HELCO and MECO systems, as these issues are associated with the grid reliability issues that will be examined in the reliability portion of this proceeding, the Parties are encouraged to address, and to the extent possible, resolve these issues as a part of the Working Group process. The commission will address Tier 3 in a separate order.

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<sup>13</sup>See Decision and Order at 44.

III.

Orders

THE COMMISSION ORDERS:

1. The HECO Companies' Schedule FIT Tier 1 and Tier 2 Tariffs, filed on August 5, 2010, are approved.

2. The HECO Companies' Schedule FIT Standard Agreement for Tier 1 and Tier 2, as revised on August 12, 2010, is approved.

3. The HECO Companies' FIT Program Queuing and Interconnection Procedures for Tiers 1 and 2, attached to the HECO Companies' comments on the IO's Status Report, filed on August 18, 2010, are approved.

4. The HECO Companies are directed to implement Tiers 1 and 2 pursuant to the schedule discussed herein.

5. The HECO Companies shall refile their Tariffs, which incorporate the Q&I Procedures, within five days of the date of this Order, and the Tariffs shall take effect two days after filing.

6. Within five days of the date of this Order, the HECO Companies shall provide to the commission the name(s) and contact information of the appropriate individual(s) who will be able to respond to inquiries from the public regarding the HECO Companies' FITs.

DONE at Honolulu, Hawaii

OCT 13 2010

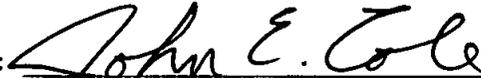
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By:



Carlito P. Caliboso, Chairman

By:



John E. Cole, Commissioner

APPROVED AS TO FORM:



Kaiulani Kidani Shinsato  
Commission Counsel

2008-0273.laa

BEFORE THE PUBLIC UTILITIES COMMISSION  
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CONCURRING OPINION OF LESLIE H. KONDO, COMMISSIONER

I concur in the decision.<sup>1</sup> I am writing separately to state my disagreement with the Hawaiian Electric Companies' ("HECO Companies") oversight and administration of the

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<sup>1</sup>I, however, have concerns about the form of the Schedule FIT Tier 1 and Tier 2 Agreement ("Agreement").

First, the Agreement requires a Tier 1 generator, of any size, to have a General Liability Insurance Policy, with limits of at least \$500,000 per occurrence, naming the utility as an additional insured. In my view, requiring an owner of a renewable energy system of less than 10 kW, i.e., almost certainly a residential homeowner, to maintain such insurance coverage is unreasonable and will likely serve to significantly reduce, if not completely eliminate, residential homeowners from participating in the FIT program. I believe that the insurance requirements for Tier 1 systems should mirror those requirements in the HECO Companies' Net Energy Metering ("NEM") program: i.e., for systems of 10 kW or less, no insurance is required.

Second, the Agreement is unclear about the HECO Companies' responsibilities should the renewable generator providing energy under a FIT contract be sold. For example, a residential homeowner executes an Agreement with HECO to sell energy generated by a rooftop PV system and subsequently sells the residence, including the PV system. Assuming the PV system continues to generate energy, the Agreement appears to obligate the HECO Companies to continue paying the prior owner for that energy. At best, the Agreement is ambiguous. In my view, to avoid even the possibility of a dispute, the Agreement should clearly address the issue.

Independent Observer ("IO"). In my view, the IO is considering issues and making recommendations that are well-beyond the scope of the IO's commission-created role and the commission-approved contract between the HECO Companies and the IO.

In the Decision and Order implementing a feed-in tariff ("FIT") program, the commission "direct[ed] the HECO Companies to collaborate with the other parties to craft queuing and interconnection procedures[.]"<sup>2</sup> The commission also determined that an IO should assist in developing the queuing process for FIT projects, oversee the queuing process, and monitor how the HECO Companies administer the queue.<sup>3</sup>

In accordance with the commission's direction, the HECO Companies contracted with the IO to "[p]rovide Independent Observer services consistent with Decision & Order dated September 25, 2009 in Docket No. 2008-0273. This will include, but not be limited to, providing assistance to the Company for the development of the queuing procedures for the Company's Feed-In Tariff programs for HECO, MECO, and HELCO. The Independent Observer will also monitor the Company's

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<sup>2</sup>Decision and Order, filed September 25, 2009 ("D&O"), at 92.

<sup>3</sup>D&O at 93. Specifically, the commission stated:

An independent third party, similar to the Independent Observer in the commission's Competitive Bidding Framework, should oversee the queuing process for FIT projects. The independent third party will assist in developing the queuing process, and inform parties of the queue length and their status in it. The independent third party will also monitor how the utility administers the queue.

administration of the queue and inform parties of the queue length and their status in it."<sup>4,5</sup>

The IO, however, interprets his role to be markedly different from that reflected in the commission's D&O and the IO Contract. According to the IO, he "was approved by the Commission to provide independent review of the FIT program" and is responsible for "ensur[ing] that the program is implemented as intended by the Commission."<sup>6</sup> I do not understand the IO's responsibilities to be nearly so broad. In my view, the

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<sup>4</sup>Attachment A - Scope of Work (Revised); see also Feed-in Tariff Third Party Services Agreement between Hawaiian Electric Company, Inc. and Accion Group, Inc., dated December 1, 2009 ("IO Contract") (emphasis added).

<sup>5</sup>The contract also identifies the IO's responsibilities as follows:

- Assist in developing the queuing process . . . ;
- Monitor the decisions made by the Company regarding the queuing to ensure the process is fair and equitable . . . ;
- Review and assess the qualitative evaluation process for selecting project applications . . . ;
- Inform the Applicants of the status of the queue . . . ;
- Monitor how the Company administers the queue[;]
- Report to the Commission on monitoring results . . . ;
- Be available to the Commission as a witness, if required . . . ;
- At the end of the first two-year reexamination period, provide an overall assessment of the FIT program and recommendations for the next period.

Attachment A - Scope of Work (Revised).

<sup>6</sup>Status Report of the Independent Observer to the Hawaii Public Utilities Commission, dated July 29, 2010 ("Status Report"), at 2.

IO's duties are to help develop and oversee the queuing process for the FIT projects -- period.<sup>7</sup>

For that reason, I find the IO's discussion about system reliability issues, transmission and distribution circuit loads, and interconnection requirement studies to be beyond the IO's scope of work. More importantly, those issues previously were raised in the docket, and where the commission has deemed appropriate, the commission already has considered or is considering the issue.<sup>8</sup> At best, the IO's efforts duplicate the commission's work, resulting in the parties unnecessarily incurring time and expenses on issues that were previously briefed.

Further, I am concerned that the IO has little foundation to support many of the recommendations, especially those relating to system reliability. I do not understand the IO to have performed an independent analysis of the HECO, MECO and HELCO systems; rather, the IO appears to adopt the HECO Companies' representations based solely on his "belief" that the

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<sup>7</sup>The National Regulatory Research Institute ("NRRI") served as the commission's consultant in this docket. If the commission required a further review of the FIT program, the commission would seek such review from NRRI.

<sup>8</sup>See, e.g., Order Approving, With Modifications, the HECO Companies' Proposal for a Reliability Standards Working Group and Technical Support Group, filed August 26, 2010 (of note, the commission did not include the IO in the Working Group or the Technical Support Group); see also D&O at 43-44 (to address concerns about system reliability, the commission limited the FIT eligible wind generation projects on the MECO and HELCO systems).

HECO Companies' concerns are legitimate.<sup>9</sup> Such recommendations do not assist the HECO Companies or the commission.

In my view, the IO's misunderstanding of his role is highlighted by his recommendation that the commission adopt a "walk before you run" approach to implementing the FIT program. The IO recommends such an approach to "test[] the interest in the FIT program in the MECO and HELCO service territories," to help "defin[e] how much of an issue system reliability will be for the FIT applicants on those islands," and "to test the functionality of the queuing process" for Oahu.<sup>10</sup>

The IO's recommended implementation schedule, however, contradicts the commission's decision. Based upon and consistent with the HECO Companies' representations, the commission determined that FIT projects of the Tiers 1 and 2 sizes likely would not cause system reliability issues, particularly on the HECO system, and directed that the FIT program for Tiers 1 and 2 on all islands be "immediately implement[ed]."<sup>11</sup>

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<sup>9</sup>E.g., Status Report at 7. Without a comprehensive understanding of the HECO, MECO and HELCO systems, the IO must make assumptions about those systems and system-related requirements, which form the foundation for certain of his recommendations. Certain assumptions, however, may be inaccurate. For example, as noted by the Consumer Advocate, the HECO Companies' capacity planning criteria is very different from the IO's expectation, based on mainland utilities' reserve requirements of 10-12%. See Division of Consumer Advocacy's Comments on the July 29, 2010 Status Report of the Independent Observer and the HECO Companies' August 5, 2010 Proposed Revised FIT Tariffs, filed August 18, 2010, at 7.

<sup>10</sup>Status Report at 16.

<sup>11</sup>D&O at 100.

Moreover, the commission established both project size limits based on technology as well as limits on the total amount of energy from FIT projects for each of the HECO Companies' systems. Those caps were established based on the commission's consideration of, among other things, system reliability concerns expressed by the HECO Companies. For example, for the MECO and HELCO systems, because of the significant amount of wind energy already interconnected to those systems, the commission limited the size of wind projects eligible for the FIT program.<sup>12</sup> Further, the commission created an "emergency exit" for the HECO Companies if the FIT resources caused system issues, expressly allowing the HECO Companies "to refuse to interconnect projects that will substantially compromise reliability."<sup>13</sup>

Given the commission's decision to approve the HECO Companies' recommendations concerning the queuing process and implementation of the program, there is limited value in discussing each concern that I have with the IO's Status Report. Suffice it to say, I generally agree with the comments filed August 18, 2010, by The Solar Alliance and the Hawaii Solar Energy Association regarding the IO's report. I also agree with a number of the comments raised by the Department of Business,

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<sup>12</sup>The HECO Companies subsequently claimed that the MECO and HELCO systems currently cannot accommodate any new variable renewable energy. See Letter from HECO to the commission, filed February 8, 2010; Letter from HECO to commission, filed February 9, 2010. The HECO Companies, however, have not sought reconsideration or modification of the D&O.

<sup>13</sup>D&O at 44; see also D&O at 56.

Economic Development and Tourism in its filing of August 18, 2010.

Although the IO reports to the commission, the contract is between the IO and the HECO Companies, not the commission. I am concerned that, without more active and effective administration of the IO Contract by the HECO Companies, the FIT program may not be developed as ordered by the commission and integration of renewable energy, in general, may be further delayed.

DONE at Honolulu, Hawaii OCT 13 2010.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By:   
\_\_\_\_\_  
Leslie H. Kondo, Commissioner

2008-0273.concurring op.sl

CERTIFICATE OF SERVICE

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

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