

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, WITH MODIFICATIONS,
HECO COMPANIES' FIT TIER 3 TARIFF,
STANDARD AGREEMENT, AND QUEUING AND INTERCONNECTION PROCEDURES

PUBLIC UTILITIES
COMMISSION

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By this Order, the commission approves, with modifications discussed herein, the HECO Companies'¹ Schedule FIT Tariff Tier 3 ("Tariff"), Schedule FIT Standard Agreement for

¹"HECO Companies" collectively refers to: Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), and Maui Electric Company, Limited ("MECO").

The parties to this proceeding are: the HECO Companies; the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"); Department of Business, Economic Development, and Tourism ("DBEDT"); Life of the Land ("LOL"); Hawaii Renewable Energy Alliance; Blue Planet Foundation ("Blue Planet"); The Solar Alliance ("SA"); Hawaii Solar Energy Association ("HSEA"); Sopogy Inc.; and Tawhiri Power LLC (collectively, "Parties").

The participants in this proceeding are: the City and County of Honolulu; the County of Hawaii; Hawaii Bioenergy, LLC; Sempra Generation; Maui Land & Pineapple Company, Inc.; Hawaii Holdings, LLC, doing business as First Wind Hawaii; and Alexander & Baldwin, Inc. through its division, Hawaiian Commercial & Sugar Company (collectively, "Participants").

Tier 3 ("Agreement"), and Queuing and Interconnection Procedures for Tier 3 ("Q&I Procedures"), all of which were filed on October 4, 2011.² The commission directs the HECO Companies to re-file the Tariff, Agreement, and Q&I Procedures for all three HECO Companies,³ incorporating the modifications discussed herein, for the commission's review and approval, by December 6, 2011, so that Tier 3 may be launched on all islands in the HECO Companies' service territories by the end of this year.

For Tiers 1 and 2, except for a few modifications discussed herein based on "lessons learned" from the operation of Tiers 1 and 2, and to align some of the modifications to the Tier 3 Tariff, Agreement, and Q&I Procedures to those for Tiers 1 and 2, the commission declines to make any other changes to Tiers 1 and 2 at this time. The HECO Companies shall re-file their Tiers 1 and 2 tariff documents, incorporating the modifications specified herein by December 6, 2011, for the commission's review and approval.

²See HECO Companies' Statement of Position on Tier 3, filed on October 4, 2011 ("HECO Companies' SOP").

³The HECO Companies' SOP attached a proposed Tariff, Agreement, and Q&I Procedures only for HECO. The HECO Companies stated in the filing that any modifications approved by the commission would be reflected in conforming Tariffs for HECO, MECO, and HELCO, and a conforming Agreement would be applicable for all three utility systems. See HECO Companies' SOP at 2 n.1.

I.

Procedural Background

On September 25, 2009, the commission issued its Decision and Order ("September 25, 2009 Decision and Order") in this docket that set forth general principles, summarized as follows, for the implementation of feed-in tariffs ("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 "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.⁴

Specifically, the commission approved FITs according to the following tiers and project sizes:

⁴September 25, 2009 Decision and Order at 1-2.

Tier	Project Size
1	0-20 kilowatts ("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

The commission directed a reexamination of FITs after two years of implementation:

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.⁵

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.⁶

⁵Id. at 98.

⁶See id. at 2.

On January 7, 2010, the HECO Companies filed their proposed tariffs and standard agreement for FIT Tiers 1 and 2; Clean Energy Maui LLC ("CEM") and Zero Emissions Leasing LLC ("Zero Emissions")⁷ also jointly filed proposed Tiers 1 and 2 Tariffs. 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 Independent Observer ("IO"), Accion Group - Harold T. Judd, for the oversight of the queuing process for FIT projects, as described in the September 25, 2009 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

⁷CEM and Zero Emissions were subsequently removed as Parties from this proceeding.

excess energy curtailment."⁸ The HECO Companies requested that the commission convene a Reliability Standards Working Group ("RSWG") and Technical Support Group ("TSG") to examine grid reliability and renewable integration on the HECO Companies' systems ("Reliability Proposal").

On February 4, 2010 and February 8, 2010, CEM/Zero Emissions and 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 ("IRs") pertaining to FIT Tiers 1 and 2 that were prepared by the commission's consultants.

For Tier 3, proposed tariffs were filed on April 29, 2010 by the HECO Companies, and by CEM/Zero Emissions. Comments were filed by the Parties on the proposed Tier 3 tariffs on May 20, 2010. Thereafter, IRs that had been prepared by the commission's consultant, the National Regulatory Research Institute ("NRRI") were served on the Parties on May 26, 2010. Responses were filed by the Parties on June 9, 10 and 14, 2010.

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

Additional IRS prepared by NRRI were served on the Parties on July 12, 2010. Responses to those IRS were filed on August 11, 12 and 13, 2010.⁹

By Order Approving, With Modifications, the HECO Companies' Proposal for a Reliability Standards Working Group and Technical Support Group, filed on August 26, 2010, the commission approved the HECO Companies' proposal to establish an RSWG and TSG, as modified by the commission's approval of a Technical Review Committee ("TRC") to provide independent technical review of reliability studies for the commission.¹⁰

By order issued on October 13, 2010 ("October 13, 2010 Order"), the commission approved the HECO Companies' proposed tariffs, standard agreement, and queuing and interconnection procedures for Tiers 1 and 2. In doing so, the commission, noting the extensive record before it, explained:

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

⁹IRS were also served on HECO on October 4, 2010. Responses to those IRS were filed on October 20 and 21 and on November 18, 2010.

¹⁰For ease of reference herein, the development of reliability standards for the HECO Companies through a process involving a RSWG, TSG, and TRC will be referred to as the "RSWG Process."

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.¹¹

Tiers 1 and 2 of the FIT program were released on November 24, 2010.

On April 18, 2011, the IO prepared a status report, in which the IO stated that the Tiers 1 and 2 tariffs "were prepared based on expectations and experience in other states. Now that the program has four months of experience in Hawaii, there are aspects of the tariffs that could be improved."¹² Accordingly, the IO recommended to complete a review of "the FIT experience to date, identify 'lessons learned', and apply those lessons to the design of Tier 3 . . . with input from interested parties, to be followed by one request for tariff amendments

¹¹October 13, 2010 Order at 9.

¹²"Status Report of the Independent Observer" dated April 18, 2011 ("IO's Status Report"), attached to Letter filed May 16, 2011, from the commission to the Parties and Participants, at 1.

before Tier 3 is released, but before the conclusion of the initial two-year test period."¹³

By order filed on June 3, 2011 ("June 3, 2011 Order"), the commission adopted the IO's recommendation in the IO's Status Report, and set the following additional procedural steps for the resolution of Tier 3:

	PROCEDURAL STEPS	DEADLINE
1.	IO Meetings on Tier 3	July 2011
2.	Filing of Proposed Tier 3 Tariffs	August 15, 2011
2a	Parties' Comments on Proposed Tier 3 Tariffs	September 12, 2011

Regarding Step 1 in the above schedule, on July 12, 2011, the IO facilitated a meeting with the Parties, also attended by members of the commission, at which the IO proposed that the Parties file one combined Statement of Position of the Parties by September 6, 2011. As proposed, the single filing was intended to combine Steps 2 and 2a in the procedural schedule approved in the June 3, 2011 Order, and streamline the filing process.

By order issued on August 5, 2011 ("August 5, 2011 Order"), the commission, sua sponte, adopted the IO's

¹³Id.

recommendation for a combined filing, and amended the procedural schedule approved in the June 3, 2011 Order. Specifically, the commission ordered that "Procedural steps 2 and 2a in the June 3, 2011 Order are . . . amended and superseded; instead, the Parties shall file one combined filing, consistent with the guidelines herein, by September 6, 2011."¹⁴ The commission cautioned that the filing should not be construed as an opportunity to re-open all issues related to all Tiers, and that the Parties would be expected to adhere as much as possible to their positions already filed in the record.¹⁵ The commission also emphasized that it does not intend to make comprehensive changes to the Tiers 1 and 2 tariffs until the two-year re-examination period, and that the focus of the filing should be on applying lessons learned to the design of Tier 3.¹⁶

On September 2, 2011, SA and HSEA requested an extension of time, from September 6, 2011 to September 23, 2011, for the Parties to file a combined statement on Tier 3. SA and HSEA stated that they were authorized to represent that the majority of the Parties either supported or did not object to the extension request.

¹⁴August 5, 2011 Order at 5 (underscoring in original).

¹⁵See id. at 3, 4.

¹⁶See id. at 4.

On September 8, 2011, the commission opened a separate docket (Docket No. 2011-0206) specifically for the RSWG Process. The commission noted in the opening order that:

[w]hile the RSWG Process grew out of the FIT Docket and is clearly related to the FIT Docket, the results of the RSWG Process are expected to have a much broader reach beyond the FIT Docket. Moreover, from an administrative standpoint, it has become apparent at this point that the RSWG Process is, by itself, large and deserving of its own docket.¹⁷

By order issued on September 15, 2011, the commission granted SA's and HSEA's extension request, and removed as Parties from this proceeding CEM and Zero Emissions for, among other things, broadening the issues and unduly delaying this proceeding.

On September 23, 2011, the IO filed a document ("IO's Filing") attaching a "Joint Filing of the Parties and Participants" ("Joint Filing") and a Memorandum prepared by the IO dated September 22, 2011 ("IO's Memorandum").¹⁸

On September 26, 2011, the IO requested leave to withdraw the Joint Filing ("IO's Motion").

¹⁷Order Opening Docket, filed on September 8, 2011, in Docket No. 2011-0206, at 12-13.

¹⁸The IO's Memorandum was separately transmitted to the Parties by commission staff on September 23, 2011 for the Parties review and comment by September 30, 2011.

By order issued on September 27, 2011 ("September 27, 2011 Order"), the commission: (1) sua sponte struck the IO's Filing from the record; (2) dismissed as moot the IO's Motion; and (3) directed the Parties to file separate Statements of Position on Tier 3 by October 4, 2011.¹⁹

On October 4, 2011, the Parties filed separate Statements of Position on Tier 3.

II.

Discussion

Like Tiers 1 and 2, the commission has an extensive record before it on Tier 3. The Parties representing renewable energy developers and advocates have raised many valid and compelling proposals for revising the HECO Companies' proposed FIT tariffs, standard agreements, and procedures for not only Tier 3, but Tiers 1 and 2, and the commission appreciates their comments.

That said, many of the larger points raised by these Parties (e.g., relating to curtailment and FIT rates) are not adequately addressed in the record and/or are presently being evaluated as part of the RSWG Process. The commission also

¹⁹The commission cited numerous problems associated with the IO's Filing and a discernible level of frustration by the Parties as reason for the commission to change course and require separate filings from the Parties on Tier 3. See September 27, 2011 Order at 4.

understands the time sensitivities and importance of having Tier 3 launched as soon as possible. Under these circumstances, the commission declines to make ad hoc modifications to the tariffs, agreements and procedures that are not supported by a comprehensive evaluation of the issues and a full record. Along these lines, the commission has expressed its intent to hold off on making whole scale changes to Tiers 1 and 2 until the first re-examination period.²⁰ The commission advised the Parties to limit their recommended changes to the FIT program for the same reasons. The HECO Companies' proposed Tariff, Agreement, and Q&I Procedures supported the commission's directives in this regard, both in substance and quantity. Thus, the commission utilized the HECO Companies' proposals as a starting point in its review of the tariff filings.

Upon review, the majority of the HECO Companies' revisions to their Tariff, Agreement, and Q&I Procedures are sound and reasonable. Thus, the commission approves the Tariff, Agreement, and Q&I Procedures, subject to the modifications and clarifications discussed below. The HECO Companies are directed to re-file their Tier 3 Tariff, Agreement, and Q&I Procedures for all three HECO Companies by December 6, 2011, incorporating the commission's modifications herein, for the commission's review and approval.

²⁰See, e.g., August 5, 2011 Order at 4.

For Tiers 1 and 2, except for a few modifications discussed herein based on "lessons learned" from the operation of Tiers 1 and 2, and to align some of the modifications to the Tier 3 Tariff, Agreement, and Q&I Procedures to those for Tiers 1 and 2, the commission declines to make any other changes to Tiers 1 and 2 at this time. The HECO Companies shall re-file their Tiers 1 and 2 tariff documents, incorporating the modifications specified herein by December 6, 2011 for the commission's review and approval.

The Parties are encouraged to work with each other in this docket and through the RSWG Process before the first re-examination period to resolve outstanding disputed issues, and to bring their recommended changes to all three FIT tiers to the commission's attention when the commission commences its first re-examination period.²¹

²¹In particular, the Parties should work together to resolve disputed language in Articles 5 ("Scheduling") and 6 ("Forecasting") in the Agreement, where the HECO Companies acknowledged: ". . . this is the type of provision where the Companies would be willing to engage in further discussions with the parties and developer community in an effort to further refine and improve the provision so that it can work more effectively for both developers and the utility." HECO Companies' SOP at 36.

A.

Tier 3 Tariff

The commission approves the HECO Companies' proposed changes to the Tier 3 Tariff, subject to the following modifications and clarifications:

1.

Deferral of In-Line Hydropower

In the HECO Companies' tariff filing on April 29, 2010, they noted that "[d]ue to the limited data set, and lack of project development in the Tier 3 size range, the Commission may wish to consider deferring in-line hydropower projects eligibility for the Tier 3 Schedule FIT Tariff until at least the first FIT update."²² The HECO Companies also noted:

It is the Companies' understanding that there are a number of parties that are either in agreement with or would not object to this action by the Commission. If viable Tier 3 in-line hydro projects emerge during this time period they would be able to access the baseline FIT rate or avail themselves of other procurement methods such as bilateral contracting with the utility.²³

Based on the present record and the HECO Companies' representations, the commission will defer eligibility of

²²Letter filed on April 29, 2010, from the HECO Companies to the commission, at 35.

²³Id.

in-line hydropower projects for technology specific rates for Tier 3, at least until the first FIT Update; these projects, however, will be eligible under the baseline rate. The HECO Companies shall revise the Tariff accordingly.²⁴

2.

Single Baseline Rate

In the September 25, 2009 Decision and Order, the commission established a baseline FIT rate:

In an effort to encourage other cost-effective projects, the commission will allow any projects utilizing [Renewable Portfolio Standards]-eligible technologies, see HRS § 269-91, but lacking specific FIT rates to apply for the FIT under a baseline rate. . . . The baseline rate shall equal the lowest specified FIT rate for any given project size.²⁵

The Parties have differing interpretations of the above language, i.e., whether the commission intended there to be one baseline rate, or multiple baseline rates depending in part on the number of tiers adopted by the commission (i.e., one

²⁴Unless otherwise specified, where the commission orders a change to a particular document (i.e., the Tariff), the HECO Companies should make conforming changes to other applicable documents (i.e., the Agreement and Q&I Procedures) and to their Tiers 1 and 2 tariffs, agreements and interconnection procedures, for consistency and conformance with the commission's directives herein.

²⁵September 25, 2009 Decision and Order at 36 (footnote omitted).

baseline rate per tier). The commission clarifies that it intended there to be one baseline rate, the lowest specified FIT rate, which would apply to all project sizes and tiers. Because the commission decides herein to defer in-line hydropower as an eligible FIT Tier 3 technology, the lowest specified FIT rate will be that for on-shore wind at 12.0 cents/kilowatt-hour ("kWh"). This rate will be the sole FIT baseline rate.

The HECO Companies are directed to revise their tariff documents for all three tiers accordingly.

3.

Capping Tier 3 CSP

The HECO Companies' proposed Tier 3 FIT rates in the Tariff²⁶ (excluding in-line hydropower, which the commission defers herein and the baseline rate) are as follows:

Based on 35% Tax Credit Under HRS § 235-12.5

Renewable Generator Type and Size	FIT Energy Payment Rate (¢/kWh)
Tier 3 PV > 500 kW and ≤ the lesser of 5 megawatts ("MW") or 1% of the system peak load	19.7
Tier 3 CSP > 500 kW and ≤ the lesser of 5 MW or 1% of the system peak load	31.5

²⁶In their October 4, 2011 filing, the HECO Companies made corrections to certain rates in the Tariff that are reflected above. The corrected rates appear reasonable and are approved herein.

Renewable Generator Type and Size	FIT Energy Payment Rate (¢/kWh)
Tier 3 On-Shore Wind > 100 kW and ≤ the lesser of 5 MW or 1% of the system peak load	12.0

Based on 25% Tax Refund Under HRS § 235-12.5(g)

Renewable Generator Type and Size	FIT Energy Payment Rate (¢/kWh)
Tier 3 PV > 500 kW and ≤ the lesser of 5 MW or 1% of the system peak load	23.6
Tier 3 CSP > 500 kW and ≤ the lesser of 5 MW or 1% of the system peak load	33.5
Tier 3 On-Shore Wind > 100 kW and ≤ the lesser of 5 MW or 1% of the system peak load	N/A

In earlier filings on Tier 3, DBEDT²⁷ and the HECO Companies²⁸ both noted that the Tier 3 CSP rates are substantially higher than those for other technologies, and suggested that the commission consider an explicit limit on the number of megawatts of CSP allowed in the initial deployment of the FIT Tier 3 program. In particular, DBEDT stated its belief "that it is important and reasonable to take into consideration

²⁷See DBEDT's Comments on Proposed Feed-In Tariffs for Tier 3, filed on May 20, 2010, at 6-7.

²⁸See Letter filed on April 29, 2010, from the HECO Companies to the commission, at 35.

the impact of the FIT program on consumers."²⁹ In addition, the HECO Companies observed that, due to differing tax treatments, certain technologies that fall under the CSP Tier 3 categories may have development costs that are significantly below those used to develop the FIT rates, resulting in substantial profit margins for these technologies.³⁰

Upon review, a cap for CSP Tier 3 projects seems fair and should be approved, at least until the first FIT review. Without a cap, CSP Tier 3 projects could fill the allocated megawatt capacity allowed under the FIT, at rates that are substantially higher than other FIT technologies and above most retail rates, and could produce windfalls for certain technologies.

After the commission's deferral of in-line hydropower as an eligible Tier 3 technology, CSP now represents one-third (i.e., 33%) of eligible Tier 3 technologies. In the absence of specific recommendations by the Parties, the commission will cap CSP Tier 3 projects at 33% of the FIT system cap for each of the

²⁹DBEDT's Comments on Proposed Feed-In Tariffs for Tier 3, filed on May 20, 2010, at 7.

³⁰See Letter filed on April 29, 2010, from the HECO Companies to the commission, at 35.

HECO Companies.³¹ This cap may be amended or terminated by the commission upon further review during the first re-examination period.

4.

Section K, "Allowed Project Development Timeline"

The HECO Companies seek to modify the second sentence of Section K of the Tariff as follows:

Should a Facility fail to meet the Guaranteed In-Service Date (subject to any grace periods provided in the Schedule FIT Agreement) ~~allowed project development timeframe~~, the Schedule FIT Agreement will be terminated and any fees and security deposits (e.g., the reservation fee) paid to the Company by Seller will be forfeited. ~~Sellers may request an extension of the allowed project development timeframe in accordance with the terms of Schedule FIT Agreement.~~

Upon review, the commission disallows the proposed change to Section K, as it deletes language that expressly allows Sellers to request an extension of the allowed project development timeframe in accordance with the terms of the Schedule FIT Agreement. In the September 25, 2009 Decision and Order, the commission determined that Sellers should be allowed to request extensions of queuing deadlines:

³¹The commission set a system cap for FIT projects of 5% of 2008 peak demand for each of the HECO Companies. See September 25, 2009 Decision and Order at 55.

Queuing and interconnection procedures should also include a mechanism for applicants to apply for extensions for the amount of time needed to meet project development milestones prior to dropping from the queue or forfeiting their deposits. Such procedures should mitigate the added risks associated with required deposits but maintain the incentive for only viable projects to apply for interconnection studies.³²

The commission understands that presently, after consultation with the IO, extensions may be granted to applicants who are unable to meet queuing deadlines. This practice should continue. Accordingly, the HECO Companies are directed to remove the proposed change to Section K (and retain the original language), because it appears contrary to present practice and the commission's directives on this issue.

5.

Section L(2), "Reservation Fee"

In Section L(2) of the Tariff, titled "Reservation Fee," the HECO Companies propose the following revisions:

Reservation Fee. A reservation fee shall be submitted by the Seller to the Company within ~~five~~ fifteen business days after successful submission of the application for service under this Schedule FIT. The reservation fee will be refunded to the Seller following the In-Service Date if the Seller meets the Guaranteed In-Service Date as set forth in the Schedule FTT Agreement.

³²September 25, 2009 Decision and Order at 93.

However, the reservation fee will be forfeited if the Seller fails to meet the Guaranteed In-Service Date as provided in the Schedule FIT Agreement. The reservation fee amount shall be determined by multiplying the ~~Schedule FIT~~ Design Capacity in kilowatts by \$~~15~~ 30 per kilowatt.

The commission finds that the present record does not adequately support the proposed increase in the reservation fee from \$15/kW to \$30/kW, but finds that the other revisions to this section are reasonable. The HECO Companies shall revise the Tariff consistent with these findings.

B.

Tier 3 Agreement

The commission approves the HECO Companies' proposed changes to the Tier 3 Agreement, subject to the following modifications and clarifications:

1.

Attachment B - Proposed Modifications to Section 1(G)

The HECO Companies propose to add two new sections to Section 1(G) of the Agreement -- Sections 1(G)(i) and 1(G)(ii). Generally, these sections would allow the HECO Companies, at their option and expense, to procure and install a "Curtailement Control Interface" when such action is deemed necessary by the

HECO Companies for reliability, safety and/or operational reasons.³³

Several Parties objected to the addition of these sections.³⁴ For example, the Solar Parties asserted that the proposed Section 1(G)(i) is unacceptable because it allows the HECO Companies sole discretion for installing curtailment capabilities even if the system is under the threshold requirements for Supervisory Control and Data Acquisition ("SCADA") under the HECO Companies' interconnection rules in their Tariff Rule 14H.³⁵ In addition, the Solar Parties maintained that several subsections under proposed Section 1(G)(ii) were "unacceptable because this issue should be established by the [Interconnection Requirements Study ("IRS")] or the interconnection rules, not imbedded in the [A]greement."³⁶

The commission agrees with the Solar Parties and disallows the HECO Companies' proposed revisions to Section 1(G) of the Agreement. These provisions should more appropriately be governed by the HECO Companies' Tariff Rule 14H, and in any IRS.

³³See HECO Companies' SOP at 13.

³⁴See, e.g., Blue Planet's Statement of Position on the Proposed 3 Feed-In Tariff, filed on October 4, 2011, at 30; HSEA's, SA's, and LOL's (collectively, "Solar Parties") Statement of Position on FIT Program, filed on October 4, 2011 ("Solar Parties' SOP"), at 29-32.

³⁵See Solar Parties' SOP at 30.

³⁶Id. at 31, 32.

Moreover, there has been no determination in the record that the HECO Companies' proposal to purchase curtailment control interfaces would be cost-effective, especially for smaller sized FIT systems.

Accordingly, the HECO Companies are ordered to delete proposed Sections 1(G)(i) and 1(G)(ii) from the Agreement.

2.

Attachment B - Proposed Modifications to Section 2(F)

The HECO Companies propose to add a new section 2(F)(i) to Attachment B as follows:

(F) Curtailment Methodology

- (i) For the purpose of this Agreement, this Section 2(F) of Attachment B (Facility Owned by Seller) shall apply if the Facility is required to install SCADA or an alternate means of curtailment for the Facility as described in Section 1(G) of this Attachment B (Facility Owned by Seller).

The commission finds this provision closely related to Sections 1(G)(i) and 1(G)(ii), which the commission disallows herein. Accordingly, the commission also orders the HECO Companies to delete Section 2(F)(i) from the Agreement.

The remaining revisions to Section 2(F) of the Agreement, however, appear reasonable, and may be retained.³⁷

C.

Tier 3 Q&I Procedures

As noted above, the IO prepared the IO's Memorandum, which discussed the IO's recommendations for the operation of Tier 3 and some modifications to the operation of Tiers 1 and 2 based on "lessons learned" from the operation of Tiers 1 and 2.³⁸ Blue Planet, HSEA/SA, and the HECO Companies filed comments on the IO's Memorandum on September 30, 2011. The HECO Companies' attached their proposed Q&I Procedures to their comments,³⁹ and noted that they had "reviewed the IO's suggested procedures and where appropriate have incorporated those suggestions and processes to the proposed [Q&I Procedures.]"⁴⁰

³⁷In addition, the commission noticed what may be a typographical error on page 54 of the Agreement under Section 28.2(B) ("Arbitration"). The following phrase appears to require further explanation or reference, or should be struck from the section: "Capitalized and otherwise undefined terms in this Article 28 (Dispute Resolution)."

³⁸See IO's Memorandum at 1.

³⁹The HECO Companies also attached their proposed Q&I Procedures to their SOP filed on October 4, 2011.

⁴⁰Letter filed on September 30, 2011, from the HECO Companies to the commission, at 3.

The commission has reviewed the foregoing filings by the Parties and the IO, and finds that the HECO Companies' proposed Q&I Procedures are acceptable to launch Tier 3, subject to the following modifications and clarifications:

1.

IO's Recommendations Regarding IRS Process

In the IO's Memorandum, to expedite and improve the IRS review process, the IO recommended "allowing applicants the option of taking responsibility for completion of the study phase of the interconnection review process by directly retaining one of the engineering firms approved by the [HECO Companies]." ⁴¹ For similar reasons, the IO also recommended that the HECO Companies post additional information, including "[a] list of documents that could be needed by the [HECO Companies] to complete the initial system impact review," ⁴² on the HECO Companies' website. On this point, the IO explained:

Not all may be required at the time of application, but the applicant would know what could be requested, and would be free to upload the documents prior to being asked. The intent is to provide clarity on the information needed to determine whether

⁴¹IO's Memorandum at 3; see also id. at 6 (IO recommending specific procedures that would allow applicants the option of selecting an approved engineering firm to conduct an IRS).

⁴²Id. at 7.

an IRS will be required, without delays resulting from any back-and-forth over requests for supplemental information.⁴³

The commission believes the IO's recommendations will improve the IRS process by providing greater transparency to the IRS process, and allowing applicants to have more control over the process. The commission accordingly approves the IO's recommendations in concept, but will decline to adopt the specific "milestone" recommendations of the IO on page 6 of the IO's Memorandum, and instead, will allow the HECO Companies and the IO to work together on specific changes to the HECO Companies' Q&I Procedures to incorporate the IO's recommendations. Similar changes should also be made to the applicable tariff documents for Tiers 1 and 2.

2.

IO's Recommendations Regarding Extensions

In the IO's Memorandum, the IO recommended that certain extensions be allowed to FIT applicants:

The IO recommends recognizing two sorts of extensions: one for milestones, and the other for the completion date. If an extension is made for a milestone, such as extension to accommodate an IRS, the next milestone will be extended automatically by an equal number of days. Other than the IRS, when the completion date is automatically extended, the completion date

⁴³Id.

may also be extended when an extension is granted after the [HECO Companies], the IO and the applicant review the project status. This would recognize that a project could hold to the original completion date, while shifting the completion date for individual milestones. As with all recommended protocols, this is intended to keep the FIT program vibrant and the queues populated by serious projects.⁴⁴

It is fair and prudent to allow FIT applicants extensions of time, as recommended by the IO. Like the IO's recommendations above regarding the IRS process, the HECO Companies and the IO shall work together on specific changes to the HECO Companies' Q&I Procedures to incorporate the IO's recommendations regarding extensions. Similar changes should also be made to the applicable tariff documents for Tiers 1 and 2.

D.

Release of Tier 3

As noted by the IO, the Parties unanimously agreed that Tier 3 should be released on Oahu as soon as possible. The Parties disagreed as to when Tier 3 should be released in the HELCO and MECO service territories, where there is presently a greater penetration of renewable resources compared to Oahu. The Parties representing renewable energy developers and

⁴⁴Id. at 8.

advocates argued that Tier 3 should be released without delay for HELCO and MECO; whereas the HECO Companies stated that they:

support the release of Tier 3 on the MECO and HELCO systems as soon as the RSWG has been able to conduct and complete the appropriate studies to evaluate system reliability and curtailment issues on those systems, and implement any recommended findings and solutions. Alternatively, the [HECO] Companies would respectfully recommend that FIT program capacity for the MECO and HELCO systems be released on a "reserve queue" basis. A release of the Tier 3 program for MECO and HELCO on this basis would (1) serve to establish a queue priority for capacity deemed to be available by the [RSWG] process; and (2) provide relevant project information to the RSWG process for use in any studies which the RSWG may commission.⁴⁵

In its October 13, 2010 Order, regarding the timing of launching Tiers 1 and 2 on all of the HECO Companies' systems, the commission stated:

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

⁴⁵Letter filed on September 30, 2011, from the HECO Companies to the commission, at 4.

report to the commission if and when these issues arise.⁴⁶

The commission decides to take a similar approach with launching Tier 3 on the HELCO and MECO systems -- that is, the commission acknowledges that system constraints might currently preclude a number of FIT projects on the HELCO and MECO grids, and if so, after consulting the IO, the HECO Companies can report these issues to the commission as they arise, as the commission required in its September 25, 2009 Decision and Order. However, the commission prefers the broadest opening of Tier 3, so that projects that can be reliably interconnected to the HELCO and MECO grids are not sacrificed to those that are deemed ineligible due to reliability constraints. The RSWG Process can begin to inform the interconnection of Tier 3 projects on all islands, but the RSWG Process should not hold up the launch of Tier 3 on the HELCO and MECO systems.

Accordingly, Tier 3 should be opened for all of the HECO Companies as soon as the commission approves a revised Tariff, Agreement, and Q&I Procedures for all of the HECO Companies that are consistent with the terms of this Order. The commission, however, adopts the following limited reservations that were recommended by the IO:

⁴⁶October 13, 2010 Order at 11 (citing September 25, 2009 Decision and Order at 44).

1. 5% of the FIT capacity allocated to each of the HECO Companies should continue to be reserved for Tier 1 applications. Existing Tier 1 applications at the time of the release of Tier 3 should be included in the 5% reservation.
2. Completed FIT projects should be counted against the FIT capacity of the applicable HECO Company queue.
3. Existing Tier 1 and Tier 2 applications should continue to be counted against the total FIT capacity of each applicable HECO Company queue.
4. The remaining FIT capacity of each of the HECO Companies should be available to an applicant on any tier.
5. The reserve queue for each tier should be of unlimited size. Applications on a reserve queue will be moved to an active queue as capacity is made available by the removal of another application for reason other than completion of the project within the FIT program.⁴⁷

E.

Lessons Learned From Tiers 1 and 2

Based on "lessons learned" from the operation of Tiers 1 and 2, the IO proposed certain limited changes to the administration of Tiers 1 and 2.⁴⁸

⁴⁷See IO's Memorandum at 8-9.

⁴⁸See generally IO's Memorandum at 3-4.

First, the IO suggested modifying Section B of the Schedule FIT Tariff that preserves the option for existing NEM customers to convert to the FIT program, but conditions that option upon the availability of sufficient FIT program capacity. This is to reflect the fact that the option to convert has been available to the existing NEM customers for some time and the FIT program capacity formerly reserved for them by the IO should now be made more broadly available to FIT program applicants.

Second, the IO noted that there have been circumstances in the course of FIT program administration where it has been appropriate for the HECO Companies to exercise limited administrative discretion in the best interests of utility customers. The IO recommended that the Schedule FIT Tariff be amended to incorporate a certain level of administrative discretion in the HECO Companies' management of the program, but that until there is no longer a need to engage an IO, the HECO Companies and the IO should confer and agree on exercising such administrative discretion.

Third, the IO recommended that, if an applicant initiates bilateral negotiations with the HECO Companies, the project should be moved to the reserve queue for the corresponding tier, and removed from the reserve queue if the bilateral negotiations result in a PPA that is approved by the commission.

No Parties appeared to object to the IO's first and second recommendations outlined above. These recommendations appear reasonable and should be approved. The HECO Companies shall modify the appropriate tariff documents for all Tiers to incorporate the IO's suggestions regarding NEM conversions and allowing the HECO Companies limited administrative discretion after consultation with the IO. Besides these modifications and other changes made to conform Tiers 1 and 2 to the commission's directives herein on Tier 3, the commission declines to make any other changes to Tiers 1 and 2 at this time.⁴⁹

The commission will provide clarification with respect to the IO's third recommendation noted above. Here, the HECO Companies disagreed with the IO, stating "it is not appropriate for project developers to engage with the utility as a FIT program applicant while simultaneously seeking to negotiate a

⁴⁹The HECO Companies proposed to modify Section G(2) of the Tariff to more closely match provisions regarding election of the tax credit refund for solar energy technologies provided in HRS § 235-12.5(g), which have recently been incorporated into power purchase agreements for projects similarly sized to Tier 3 projects, and submitted to the commission for approval. See HECO Companies' SOP at 8-9. The commission approves that change to the Tier 3 Tariff herein. While the HECO Companies may conform Tiers 1 and 2 to the decisions herein, where applicable, the commission finds that the record does not presently support conforming Section G(2) of the Tier 3 Tariff to equivalent sections in the Tiers 1 and 2 tariffs. The commission may re-examine this issue at the first FIT Update.

contract for the same renewable resource capacity."⁵⁰ The commission agrees with the HECO Companies, and is concerned that allowing the option to simultaneously pursue both a FIT and bilateral negotiations for a PPA with the HECO Companies has the potential of providing certain developers unfair advantages over those who choose one procurement mechanism over another. Accordingly, the commission clarifies that developers may not simultaneously engage with the HECO Companies as a FIT program applicant and seek to negotiate a contract with the HECO Companies for the same project.

III.

Orders

THE COMMISSION ORDERS:

1. The HECO Companies' Tariff, Agreement, and Q&I Procedures filed on October 4, 2011 are approved, subject to the modifications and clarifications addressed in this Order.

2. The HECO Companies shall re-file the Tariff, Agreement, and Q&I Procedures for all three HECO Companies, incorporating the modifications discussed herein, for the commission's review and approval, by December 6, 2011.

⁵⁰Letter filed on September 30, 2011, from the HECO Companies to the commission, at 2.

3. Likewise, the HECO Companies shall re-file the tariffs, standard agreements, and interconnection procedures for Tiers 1 and 2, incorporating the modifications specified herein by December 6, 2011, for the commission's review and approval.

DONE at Honolulu, Hawaii NOV 22 2011.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By *Hermina Morita*
Hermina Morita, Chair

By *John E. Cole*
John E. Cole, Commissioner

By (RECUSED)
Michael E. Champley, Commissioner

APPROVED AS TO FORM:

Kaiulani Kidani Shinsato
Kaiulani Kidani Shinsato
Commission Counsel

2008-0273.jyk

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