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ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
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July 20, 2015

HAND DELIVERY

The Honorable Chair and Members of
the Hawaii Public Utilities Commission
465 South King Street
Kekuanaoa Building, Room 103
Honolulu, Hawaii 96813

Re: Docket No. 2015-0022: In the Matter of the Application of Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., Maui Electric Company, Limited (collectively, "HECO Companies") and NextEra Energy, Inc. for Approval of the Proposed Change of Control and Related Matters: DBEDT's Exhibit List; Issue Matrix; Answering and Direct Testimonies

Dear Commissioners and Commission Staff:

The undersigned Deputy Attorney General, on behalf of the Department of Business, Economic Development, and Tourism ("DBEDT"), by and through its Director in his capacity as the Energy Resources Coordinator, respectfully submits the following documents in accordance with Order No. 32739:

(1) DBEDT's Exhibit List, identifying the Answering and Direct Testimonies of DBEDT's two witnesses in this proceeding, Mark B. Glick and Karl R. Rábago, as well as each witnesses' supporting exhibits;

(2) DBEDT Issues Matrix, identifying where in DBEDT's Answering and Direct Testimony and supporting exhibits DBEDT addresses the issues specified in Order No. 32739;

(3) Mr. Glick's and Mr. Rábago's Answering and Direct Testimonies and supporting exhibits; and

(4) a Certificate of Service.

Pursuant to Order No. 32739, I have enclosed eight copies of the aforementioned documents, as well as a compact disk containing these same materials.

Please contact me at (808) 586-1198 if you have any questions.

DATED: Honolulu, Hawaii, July 20, 2015.

GREGG J. KINKLEY
Deputy Attorney General

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., MAUI ELECTRIC COMPANY, LIMITED, AND NEXTERA ENERGY, INC. APPLICATION FOR APPROVAL OF THE PROPOSED CHANGE OF CONTROL AND RELATED MATTERS	)	DOCKET NO. 2015-0022

THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM'S

EXHIBIT LIST, ISSUES MATRIX,
ANSWERING AND DIRECT TESTIMONY,
SUPPORTING EXHIBITS

AND

CERTIFICATE OF SERVICE

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July 20, 2015

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., MAUI ELECTRIC COMPANY, LIMITED, AND NEXTERA ENERGY, INC. APPLICATION FOR APPROVAL OF THE PROPOSED CHANGE OF CONTROL AND RELATED MATTERS	)	DOCKET NO. 2015-0022

DBEDT's Exhibit List

Exhibit No.	Description
DBEDT Exhibit-1	Answering and Direct Testimony of Mark B. Glick
DBEDT Exhibit-2	*Curriculum Vitae* of Mark B. Glick
DBEDT Exhibit-3	Answering and Direct Testimony of Karl R. Rábago
DBEDT Exhibit-4	*Curriculum Vitae* of Karl R. Rábago
DBEDT Exhibit-5	Prior Testimony Sponsored by Karl R. Rábago

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., MAUI ELECTRIC COMPANY, LIMITED, AND NEXTERA ENERGY, INC. APPLICATION FOR APPROVAL OF THE PROPOSED CHANGE OF CONTROL AND RELATED MATTERS	)	DOCKET NO. 2015-0022

DBEDT's Issues Matrix

Issue No.	Issue Description	Location of Discussion
1	Whether the Proposed Transaction is in the Public Interest.	DBEDT Exhibit-1 at 25-32; DBEDT Exhibit-3 at 18.
1.a.	Whether approval of the Proposed Transaction would be in the best interests of the State's economy and the communities served by the HECO Companies.	DBEDT Exhibit-1 at 33-42.
1.b.	Whether the Proposed Transaction, if approved, provides significant, quantifiable benefits to the HECO Companies' ratepayers in both the short and the long term beyond those proposed by the HECO Companies in recent regulatory filings.	DBEDT Exhibit-1 at 42-43; DBEDT Exhibit-3 at 18-20.
1.c.	Whether the proposed transaction will impact the ability of the HECO Companies' employees to provide safe, adequate, and reliable service at reasonable cost.	DBEDT Exhibit-1 at 34-35, 43. DBEDT Exhibit-3 at 29-34.
1.d.	Whether the proposed financing and corporate restructuring proposed in the Application is reasonable.	DBEDT Exhibit-1 at 43-48; DBEDT Exhibit-3 at 20.
1.e.	Whether adequate safeguards exist to prevent cross subsidization of any affiliates and to ensure the commission's ability to audit the books and records of the HECO Companies, including affiliate transactions.	DBEDT Exhibit-3 at 21.

Issue No.	Issue Description	Location of Discussion
1.f.	Whether adequate safeguards exist to protect the HECO Companies' ratepayers from any business and financial risks associated with the operations of NextEra and/or any of its affiliates.	DBEDT Exhibit-1 at 48-49.
1.g.	Whether the Proposed Transaction, if approved, will enhance or detrimentally impact the State's clean energy goals.	DBEDT Exhibit-1 at 25-32, 49-56; DBEDT Exhibit-3 at 21-27.
1.h.	Whether the transfer, if approved, would potentially diminish competition in Hawaii's various energy markets and, if so, what regulatory safeguards are required to mitigate such adverse impacts.	DBEDT Exhibit-1 at 56-59; DBEDT Exhibit-3 at 27-29.
2	Whether the Applicants are fit, willing, and able to properly provide safe, adequate, reliable electric service at the lowest reasonable cost in both the short and the long term.	DBEDT Exhibit-1 at 60; DBEDT Exhibit-3 at 29.
2.a.	Whether the Proposed Transaction, if approved, will result in more affordable electric rates for the customers of the HECO Companies.	DBEDT Exhibit-1 at 38-41.
2.b.	Whether the Proposed Transaction, if approved, will result in an improvement in service and reliability for the customers of the HECO Companies.	DBEDT Exhibit-3 at 30-34.
2.c.	Whether the Proposed Transaction, if approved, will improve the HECO Companies' management and performance.	DBEDT Exhibit-1 at 60-62.
2.d.	Whether the Proposed Transaction, if approved, will improve the financial soundness of the HECO Companies.	DBEDT Exhibit-3 at 34-37.
3	Whether the Proposed Transaction, if approved, would diminish, in any way, the commission's current regulatory authority over the HECO Companies, particularly in light of the fact that the ultimate corporate control of the HECO Companies will reside outside of the State.	DBEDT Exhibit-1 at 62-64; DBEDT Exhibit-3 at 37-40.
4	Whether the financial size of the HECO Companies relative to NextEra's other affiliates would result in a diminution of regulatory control by the commission.	DBEDT Exhibit-3 at 40-41.
5	Whether NextEra, FPL, or any other affiliate has been subject to compliance or enforcement orders issued by any regulatory agency or court.	DBEDT Exhibit-3 at 41-42.
6	Whether any conditions are necessary to ensure that the Proposed Transaction is not detrimental to	DBEDT Exhibit-1 at 64-74; DBEDT Exhibit-3 at 42.

Issue No.	Issue Description	Location of Discussion
	the interests of the HECO Companies' ratepayers or the State and to avoid any adverse consequences and, if so, what conditions are necessary.	

BEFORE THE HAWAII PUBLIC UTILITIES COMMISSION

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

ANSWERING AND DIRECT TESTIMONY OF MARK B. GLICK

ON BEHALF OF THE

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

DBEDT Exhibit-1 through DBEDT Exhibit-2

July 20, 2015

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BEFORE THE HAWAII PUBLIC UTILITIES COMMISSION

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

SUMMARY OF THE
ANSWERING AND DIRECT TESTIMONY OF MARK B. GLICK
ON BEHALF OF THE
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Mark B. Glick is the State Energy Administrator for Hawaii's State Energy Office, a division of the Department of Business, Economic Development, and Tourism ("DBEDT"). In his Answering and Direct Testimony, Mr. Glick provides an objective discussion of the State's energy policy goals and directives that are designed to facilitate the State's transformation to a clean energy economy, as well as recent efforts by the State of Hawaii Public Utilities Commission ("Commission") to advance these same policies. Mr. Glick explains that these policy goals and efforts—including the top policy priority of achieving a 100% renewable energy future by 2045—provide the requisite context for establishing the baseline against which the Proposed Transaction should be compared. In explaining this baseline, Mr. Glick concludes that resolution of the public interest inquiry does not hinge on whether NextEra demonstrates that the Proposed Transaction will maintain the *status quo* or leave customers and the State unharmed. Significantly, Mr. Glick also explains that the public interest inquiry should not hinge on whether NextEra demonstrates it will be a better performer than the Hawaiian Electric Companies. Rather, resolution of the public interest inquiry should hinge on whether NextEra has demonstrated that it will provide significant, quantifiable benefits, not necessarily as compared to the Hawaiian Electric Companies, but as compared to a no-transaction future where the State's distribution utilities have: (1) developed a business case that demonstrates the ability to achieve a desired end-state objective (i.e., meeting a 100% Renewable Portfolio Standard by 2045 as required by Act 97 (2015)); (2) formulated a decision framework for implementing that business case (consistent with the clear guidance provided by the Commission's Inclinations); and (3) identified assumptions and a timeline for actions that will position the utility to meet the State's clean energy goals (as required as part of the Power Supply Improvement Plans and Distributed Generation Interconnection Plan/Distributed Energy Resources Policies docket).

While DBEDT was optimistic that the proposed change of control would result in incremental benefits (i.e., benefits that would only be achieved as a direct result of the transaction) that advance the State's efforts to achieve its energy policy goals and directives, Mr. Glick explains that DBEDT's review of the merits of the Application does not support such a finding. As an overarching issue, DBEDT is concerned with NextEra's inability to cite to any concrete plan to support its claims about strengthening and accelerating the HECO Companies' clean energy transformation. Mr. Glick also identifies a number of specific concerns. After testing the Applicants' contentions through discovery, DBEDT is compelled to conclude that the Applicants failed to meet their burden of demonstrating that the proposal is in the public interest.

In light of the Applicants' failure to present a proposal that meets the public interest standard, Mr. Glick explains that the Hawaii Public Utilities Commission can either issue an order rejecting the Application or elect to undertake the Applicants' burden and restructure the

proposal to ensure that it is consistent with the public interest. While Mr. Glick explains that the Commission should not feel compelled to fix the flawed proposal for the Applicants, he identifies certain conditions that could form the basis of an order conditionally approving the Application should the Commission decide not to reject the proposal outright. In the event the Commission elects to issue an order conditionally approving the Application, Mr. Glick also indicates that DBEDT stands ready and willing to work with the Commission, NextEra, and interested stakeholders to monitor compliance with the conditions and enforce measures designed to ensure accountability. In addition to participation in the monitoring of such conditions, DBEDT would be prepared to participate in substantive negotiations with all interested parties, including NextEra and the HECO Companies, as soon as possible to attempt to achieve a workable settlement to achieve the State's goals. However, the required commitments will be required to be both specific and enforceable.

BEFORE THE HAWAII PUBLIC UTILITIES COMMISSION

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

ANSWERING AND DIRECT TESTIMONY OF MARK B. GLICK
ON BEHALF OF THE
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

I. INTRODUCTION

Q. Please state your name and business address for the record.

A. My name is Mark B. Glick. My business address is 235 S. Beretania Street, 5th Floor, Honolulu, Hawaii, 96813.

Q. By whom are you employed and in what capacity?

A. I am employed by the State of Hawaii Department of Business, Economic Development, and Tourism ("DBEDT"). I serve as the Administrator of Hawaii's State Energy Office. The State Energy Office is a division of DBEDT.

Q. On whose behalf are you testifying in this proceeding?

A. I am testifying on behalf of DBEDT.

Q. Please describe the responsibilities of DBEDT and the State Energy Office.

A. DBEDT is charged by statute to, among other things, "undertake statewide business and economic development activities, undertake energy development and management, provide economic research and analysis, plan for the use of Hawaii's ocean resources, and encourage the development and promotion of industry and international commerce through programs established by law." HRS § 26-18(a). As the State Energy Administrator, it is my responsibility to manage, develop, oversee, and implement statewide energy programs, policies, and initiatives that support the State's clean energy objectives. A more detailed description of DBEDT's statutory responsibilities is contained in DBEDT's February 18, 2015 Motion to Intervene in this proceeding.

Q. Please summarize your work experience and education.

A. I have served as Administrator of the Hawaii State Energy Office since October 2011. As Administrator, I lead Hawaii's internationally regarded clean energy transformation and innovation efforts. Some highlights of my tenure include exceeding Hawaii's 2015 interim renewable portfolio and energy efficiency portfolio standards, leading the nation for three consecutive years in the per capita value of energy saving performance contracts, and establishing the Hawaii Green Infrastructure Authority and the Green Energy Market Securitization ("GEMS") low-interest bond/on-bill energy finance program with an initial issuance of $150 million in bonds. For seven years prior to serving as Administrator, I headed operations and economic development for the Office of Hawaiian Affairs. I was a small business owner for about a decade prior where I focused on reducing urban air pollution in the United States and abroad in collaboration with the U.S. Department of

Energy, the Gas Research Institute, Petrobangla, Southern California Gas Company, Pacific Gas & Electric, Transco, Southern Union Gas Company and the New York City Department of Transportation. Before that, I served as senior advisor to the Texas Land Commissioner from 1987 to 1991, and worked on passage of amendments to the Texas Clean Air Act and similar provisions in the federal Clean Air Act Amendments of 1990.

My education and work experience is set forth in detail in my *curriculum vitae*, which is attached hereto as DBEDT Exhibit-2.

Q. Have you testified previously before the Hawaii Public Utilities Commission (the "Commission")?

A. I have not previously testified before the Commission. However, I have testified numerous times before the United States Congress on various energy issues affecting Hawaii. For instance, on July 14, 2015, I testified before the U.S. Senate Energy and Natural Resources Committee about the challenges and opportunities faced in operating islanded energy systems in the Hawaiian archipelago. I also testified before the U.S. Senate Energy and Natural Resources Committee's Subcommittee on Energy on February 12, 2014. In addition, since 2003, I have testified before the Hawaii Legislature on several hundred legislative proposals relating to energy, economic development, and the environment as Administrator of the Hawaii State Energy Office, an officer of the Office of Hawaiian Affairs, board member of KAHEA: The Environmental Alliance and the Sierra Club Hawaii Chapter, and member of the Hawaii Energy Policy Forum.

Q. Is DBEDT sponsoring testimony by any other witness?

A. Yes, Mr. Karl R. Rábago is also submitting Answering and Direct Testimony on behalf of DBEDT. Through my testimony and the testimony of Mr. Rábago, DBEDT's intent is to provide the Commission with important insight into: (1) the merits or demerits of NextEra Energy, Inc.'s ("NextEra") proposals here in Hawaii; and (2) whether NextEra's experiences in other States offer support for its claims regarding its ability to act on those proposals.

Q. What is the purpose of your Answering and Direct Testimony in this proceeding?

A. My Answering and Direct Testimony addresses the January 29, 2015 Application of the Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), and Maui Electric Company, Limited ("MECO")) (HECO, HELCO and MECO are collectively referred to as the "HECO Companies" or "HEI"), and NextEra (HEI and NextEra are jointly referred to as the "Applicants") for Approval of the Proposed Change of Control and Related Matters ("Application" or "Proposed Transaction").[1] In addition to this Introduction section (Part I) and the following section that addresses specific requirements of the Commission's April 1, 2015 Order No. 32379 (Part II), my testimony addresses the following three substantive issues:

Contextual Background for the Proposed Transaction. To provide necessary and relevant context for the Proposed Transaction, I preface my substantive comments with an objective discussion of the State of Hawaii's electric utility industry. This discussion, which is contained in Part III below, addresses legislative and regulatory goals, policies, and initiatives to help establish the appropriate baseline against which the Commission can compare the Applicants' representations about the purported benefits of the Proposed Transaction. The key takeaway from this discussion is that, in light of

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[1] Although it is often characterized as a "merger," that term is somewhat of a misnomer. The Proposed Transaction involves an "acquisition" whereby NextEra will take over control of the HECO Companies.

legislative and regulatory developments and recent actions, the appropriate baseline against which NextEra's proposal should be compared is based on a no-transaction future where the State's distribution utilities have: (1) developed a business case that demonstrates the ability to achieve a desired end-state objective (i.e., meeting a 100% Renewable Portfolio Standard ("RPS") by 2045 as required by Act 97); (2) formulated a decision framework for implementing that business case (consistent with the clear guidance provided by the Commission's Inclinations[2]); and (3) identified assumptions and a timeline for actions that will position the utility to meet the State's clean energy goals (as required as part of the Power Supply Improvement Plans ("PSIPs") and Distributed Generation Interconnection Plan ("DGIP") and Distributed Energy Resource ("DER") Policies docket).

Discussion of Specified Issues from Order No. 32739. Hawaii has made great strides in pursuing its transformation toward a clean energy economy. As discussed in the contextual background section in Part III, however, more work must be done. When the Proposed Transaction was announced, DBEDT was optimistic that NextEra would be an enthusiastic utility partner and a catalyst for the major changes necessary to meet Hawaii's aggressive clean energy goals. While DBEDT was underwhelmed by the lack of detail in the January 29, 2015 Application regarding NextEra's plans for meeting those goals, it remained optimistic that the Applicants' April 13, 2015 Direct Testimony would contain detail demonstrating that the Proposed Transaction is in the public interest. Much like the Application, however, the Applicants' Direct Testimony did not contain any

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[2] The Commission attached a white paper entitled *Inclinations on the Future of Hawaii's Electric Utilities* at Attachment A to Order No. 32052 at Exhibit A ("Inclinations").

meaningful level of detail. Unfortunately, DBEDT's attempts to elicit this necessary information through the discovery process have been unsuccessful. Thus, despite its initial optimism, DBEDT is compelled to conclude that the Applicants have failed to meet their burden of demonstrating that the Proposed Transaction is in the public interest. In Part IV below, I detail the rationale underlying this conclusion, with specific reference to the issues the Commission identified in Order No. 32379.

DBEDT's Recommendations in Light of the Applicants' Failure to Present a Proposal that Meets the Public Interest Standard. In Part V below, I explain that the Commission has authority to issue an order rejecting the Application. While it is not the Commission's obligation to undertake the Applicants' burden and restructure the proposal to ensure it is consistent with the public interest, I identify certain conditions that could form the basis of an order conditionally approving the Application should the Commission not be inclined to reject the Proposed Transaction outright. Consistent with Issue 1.b. from Order No. 32379, these conditions must ensure that the Proposed Transaction results in significant, quantifiable benefits in the short and long term. However, given that shareholders realize substantial benefits immediately upon approval, the Commission should also ensure that ratepayers and the State receive up-front benefits. Otherwise, the Applicants will have successfully, and inappropriately, shifted transaction risk away from themselves and onto ratepayers and the State.

Q. Was your Answering and Direct Testimony prepared by you or under your direct supervision and control?

A. Yes.

II. COMPLIANCE WITH ORDER NO. 32379 REQUIREMENTS

Q. Pursuant to page 14 of Order No. 32739, please identify the exhibits DBEDT is sponsoring.

A. DBEDT is sponsoring the following five exhibits:

Exhibit No.	Description
DBEDT Exhibit-1	Answering and Direct Testimony of Mark B. Glick
DBEDT Exhibit-2	*Curriculum Vitae* of Mark B. Glick
DBEDT Exhibit-3	Answering and Direct Testimony of Karl R. Rábago
DBEDT Exhibit-4	*Curriculum Vitae* of Karl R. Rábago
DBEDT Exhibit-5	Prior Testimony Sponsored by Karl R. Rábago

Q. At pages 8 to 10 of Order No. 32739, the Commission established six main issues and several sub-issues that the parties were to address in their pre-filed testimony. Please identify the issues you and Mr. Rábago are addressing.

A. In accordance with the Commission's instructions, the table below lists each of the issues established by the Commission in Order No. 32739 for discussion in pre-filed testimony, and indicates where Mr. Rábago and/or I address such issues in our respective testimonies or supporting exhibits:

Issue No.	Issue Description	Location of Discussion
1	Whether the Proposed Transaction is in the Public Interest.	DBEDT Exhibit-1 at 25-32; DBEDT Exhibit-3 at 18.
1.a.	Whether approval of the Proposed Transaction would be in the best interests of the State's economy and the communities served by the HECO Companies.	DBEDT Exhibit-1 at 33-42.

Issue No.	Issue Description	Location of Discussion
1.b.	Whether the Proposed Transaction, if approved, provides significant, quantifiable benefits to the HECO Companies' ratepayers in both the short and the long term beyond those proposed by the HECO Companies in recent regulatory filings.	DBEDT Exhibit-1 at 42-43; DBEDT Exhibit-3 at 18-20.
1.c.	Whether the proposed transaction will impact the ability of the HECO Companies' employees to provide safe, adequate, and reliable service at reasonable cost.	DBEDT Exhibit-1 at 34-35, 43. DBEDT Exhibit-3 at 29-34.
1.d.	Whether the proposed financing and corporate restructuring proposed in the Application is reasonable.	DBEDT Exhibit-1 at 43-48; DBEDT Exhibit-3 at 20.
1.e.	Whether adequate safeguards exist to prevent cross subsidization of any affiliates and to ensure the commission's ability to audit the books and records of the HECO Companies, including affiliate transactions.	DBEDT Exhibit-3 at 21.
1.f.	Whether adequate safeguards exist to protect the HECO Companies' ratepayers from any business and financial risks associated with the operations of NextEra and/or any of its affiliates.	DBEDT Exhibit-1 at 48-49.
1.g.	Whether the Proposed Transaction, if approved, will enhance or detrimentally impact the State's clean energy goals.	DBEDT Exhibit-1 at 25-32, 49-56; DBEDT Exhibit-3 at 21-27.
1.h.	Whether the transfer, if approved, would potentially diminish competition in Hawaii's various energy markets and, if so, what regulatory safeguards are required to mitigate such adverse impacts.	DBEDT Exhibit-1 at 56-59; DBEDT Exhibit-3 at 27-29.
2	Whether the Applicants are fit, willing, and able to properly provide safe, adequate, reliable electric service at the lowest reasonable cost in both the short and the long term.	DBEDT Exhibit-1 at 60; DBEDT Exhibit-3 at 29.
2.a.	Whether the Proposed Transaction, if approved, will result in more affordable electric rates for the customers of the HECO Companies.	DBEDT Exhibit-1 at 38-41.
2.b.	Whether the Proposed Transaction, if approved, will result in an improvement in service and reliability for the customers of the HECO Companies.	DBEDT Exhibit-3 at 30-34.
2.c.	Whether the Proposed Transaction, if approved, will improve the HECO Companies' management and performance.	DBEDT Exhibit-1 at 60-62.

Issue No.	Issue Description	Location of Discussion
2.d.	Whether the Proposed Transaction, if approved, will improve the financial soundness of the HECO Companies.	DBEDT Exhibit-3 at 34-37.
3	Whether the Proposed Transaction, if approved, would diminish, in any way, the commission's current regulatory authority over the HECO Companies, particularly in light of the fact that the ultimate corporate control of the HECO Companies will reside outside of the State.	DBEDT Exhibit-1 at 62-64; DBEDT Exhibit-3 at 37-40.
4	Whether the financial size of the HECO Companies relative to NextEra's other affiliates would result in a diminution of regulatory control by the commission.	DBEDT Exhibit-3 at 40-41.
5	Whether NextEra, FPL, or any other affiliate has been subject to compliance or enforcement orders issued by any regulatory agency or court.	DBEDT Exhibit-3 at 41-42.
6	Whether any conditions are necessary to ensure that the Proposed Transaction is not detrimental to the interests of the HECO Companies' ratepayers or the State and to avoid any adverse consequences and, if so, what conditions are necessary.	DBEDT Exhibit-1 at 64-74; DBEDT Exhibit-3 at 42.

III. CONTEXTUAL BACKGROUND FOR THE PROPOSED TRANSACTION

Q. What context is necessary to provide for a meaningful evaluation of whether the Proposed Transaction is in the public interest?

A. In considering whether the Proposed Transaction is in the public interest, it is important to establish an objective baseline upon which the Commission can compare NextEra's claims about improved performance, customer benefits, etc. The context needed to establish that objective baseline includes identification and discussion of past and present legislative initiatives, forward-looking policy objectives and goals, as well as regulatory proceedings pertaining to HEI's efforts to reliably integrate more renewable resources into each of the Island grids (e.g., proceedings relating to the HECO Companies' forward-looking resource plans).

Q. Please discuss the State's clean energy policies that are relevant to the public interest inquiry the Commission is undertaking.

A. Hawaii has articulated clean energy policies designed to transform the most oil-dependent state in the nation to a national model for job creation, industrial transformation, environmental compliance, technological innovation, and ratepayer relief. The State's bold energy policies are rooted in one fundamental principle: a commitment to maximize the deployment of cost effective investments in clean energy production and management for the purpose of promoting Hawaii's energy security and well-being. The State firmly believes that adherence to this principle will result in the most secure foundation for Hawaii's economy and way of life.

The State has established five guiding directives to help ensure whether particular actions or proposals are consistent with the State's energy policy principles: (1) Diversify our energy portfolio; (2) Connect and modernize our grids; (3) Balance technical, economic, environmental, and cultural considerations; (4) Leverage our position as an innovation test bed; and (5) Create an efficient marketplace that benefits producers and consumers.

A top priority for the State is the achievement of a 100% renewable energy future. Notably, Act 97 (2015) establishes renewable energy metrics that culminate with a 100% RPS by 2045. This law is expected to drive an energy transformation that will significantly create new jobs in the State, greatly reduce our dependence on fossil fuels, deliver energy cost savings, and have measurable environmental and public health benefits for the citizens of the State. Hawaii is the first state in the Nation to pursue a 100% clean energy future, and it is imperative that all necessary and interested parties and agencies work collaboratively to achieve this laudable mandate.

In addition to Act 97, the State has adopted other aggressive and innovative clean energy legislation. Rather than go into detail on each provision, I will highlight a few pertinent examples. One such example is the State's Energy Efficiency Portfolio Standard ("EEPS"), which was established in Act 155 (2009), and seeks to reduce electricity use by 4,300 gigawat-hours ("GWh") by 2030, a roughly 40% reduction in electricity use from 2007 levels.

Another example is Act 165 (2012), which establishes the regulatory structure under which inter-island undersea transmission cables can be developed. Furthermore, the State passed grid modernization legislation, enacted last year in Act 109 (2014), to maximize the integration of clean energy resources safely, cost-effectively, and fairly into Hawaii's electric grid. Also in 2014, the Legislature passed Act 109, also known as the "Grid Modernization Law" which provided the framework to advance the modernization of Hawaii's electric grids.

Most recently, in 2015, the Legislature passed Act 38, which amended the State's objectives and policies relating to energy facility systems, including a policy of ensuring that liquefied natural gas ("LNG") is used only as a cost-effective transitional, limited-term replacement of petroleum for electricity generation. The use of LNG in electric generation should not impede the development and use of other cost-effective renewable energy sources. Act 38 further provides for an end-state of fossil-free use for energy generation in the electricity and ground transportation sectors.

Another landmark legislation passed by the Legislature this year is Act 100, which requires the utility to file a Community-Based Renewable Energy Tariff with the Commission by October 1, 2015. DBEDT views the concept of a Community-Based Renewable Energy Tariff as an attractive means of advancing Hawaii's clean energy policies. A viable, community-based renewable program will allow the State to both broaden the benefits of clean energy to underserved residents and allow for greater system penetration of renewables in support of our RPS targets. In addition, it could become an effective mechanism for deployment of GEMS resources.

While these are limited examples, they demonstrate how Hawaii is acting on the fundamental principle underlying its energy policy.

Q. Please explain how these legislative actions, including the RPS metrics contained in Act 97, provide necessary context the Commission should consider in evaluating the Proposed Transaction.

A. These legislative actions demonstrate that the State has made great strides in developing and implementing policies that will facilitate the clean energy transformation. However, passage of Act 97, which Governor Ige signed on June 10, 2015, marks a substantial turning point. In passing this legislation, the Legislature provided great clarity by formally defining the end state that the State's utilities should be planning to meet. Essentially, Act 97 establishes *the* standard that the State's electric utilities *will* be required to achieve. That end state applies regardless of whether the HEI companies are owned by HEI or NextEra. In addition to this end-state of meeting a 100% RPS by 2045, Act 97 increases the 2020 RPS requirement to 30%, maintains the 2030 RPS requirement of 40%, and requires 70% RPS by 2040. Consequently, Act 97 is important to consider in determining whether the Proposed Transaction is in the public interest because it establishes the appropriate baseline against which NextEra's proposal should be compared. In other words, it is insufficient to contend that resolution of the public interest inquiry hinges only on whether NextEra demonstrates incremental improvements above and beyond what the HECO Companies believe they could achieve on a standalone basis. Rather, resolution of the public interest inquiry should hinge on whether NextEra demonstrates incremental benefits as compared to a no-transaction future where the State's electric distribution utilities have developed a business case that demonstrates the ability to achieve the desired end-state objective of meeting a 100% RPS by 2045.

Q. Please describe the regulatory proceedings that provide relevant context for the Commission's consideration of the Application in this proceeding.

A. Shortly after I became Energy Administrator, on September 8, 2011, the Commission opened the Reliability Standards Working Group ("RSWG") proceeding in Docket No. 2011-0206. The RSWG proceeding was opened to assess, develop, and recommend fact-based standards, metrics, rules criteria, and processes to facilitate the interconnection of the maximum amount of renewable generation in each of the HECO Companies' island grids while preserving grid reliability. *Order Regarding Reliability Standards Working Group Process*, Docket No. 2008-0273, at 7 (June 14, 2011). DBEDT actively participated in that proceeding, including in the various subgroups that were formed to identify, analyze, and assess reliability and curtailment concerns and to develop recommendations for how to improve renewables integration and grid reliability. The RSWG concluded its work in January of 2013. The RSWG provided final work products pertaining to reliability standards, new generation interconnection, system operational flexibility, and renewable generation curtailments for the Commission's consideration. Those work products were transmitted to the Commission by the Independent Facilitator on March 25, 2013, and were subject to independent technical review by the Technical Review Committee ("TRC") established by the Commission in that proceeding. The TRC submitted its report to the Commission in May 2013, and the parties, including DBEDT, filed comments on the TRC's report on June 10, 2013. The Commission issued a final decision in the RSWG docket on April 28, 2014.

In parallel with the RSWG proceeding, the Commission, on March 1, 2012, issued an order initiating the Integrated Resource Planning ("IRP") cycle for each of the HECO Companies in Docket No. 2012-0036. *Regarding Integrated Resource Planning*, Docket No. 2012-0036, Order No. 30233, Initiating HECO Companies' Integrated Resource Planning Process, at 2 (March 1, 2012). The proceeding was established to examine the IRP Report and Action Plan that was to be submitted in compliance with the Commission's March 14, 2011 Revised Framework for Integrated Resource Planning. Among the issues the HECO Companies were required to address as part of their IRP Report and Action Plan were: (1) strategies to replace the existing fossil fuel based electricity generating plants with renewable energy resources; and (2) transmission of firm or intermittent electricity between islands, including plans to develop undersea electricity transmission cables. *Regarding Integrated Resource Planning*, Docket No. 2012-0036, Order No. 30534, Identifying Issues and Questions for the Hawaiian Electric

Companies' Integrated Resource Planning Process, at 3 (July 19, 2012). The Commission stated that it was "imperative that the Action Plan be consistent with State energy policies and goals, while providing safe and reliable utility service at reasonable costs." *Regarding Integrated Resource Planning*, Order No. 30233, Initiating HECO Companies' Integrated Resource Planning Process, at 3 (March 1, 2012). One clear purpose of the IRP process is the development of Action Plans that identify resources and actions for a five-year future time frame to meet the IRP planning objectives in light of uncertainties. *Regarding Integrated Resource Planning*, Order No. 32052, Decision and Order, at 34 (April 28, 2014) ("Order No. 32052"). DBEDT actively participated in that proceeding, including as a member of the Advisory Group established for that proceeding.

On April 28, 2014, the Commission, in Order No. 32052, rejected the HECO Companies' IRP Report. The Commission found that the IRP Report was non-compliant and inconsistent with the framework that was established for the IRP process. The Commission found that, among other things, the HECO Companies' Action Plans failed to include sufficient meaningful analysis. The Commission also found that the HECO Companies failed to rank or prioritize the resource plans according to established criteria, employed inappropriate and inadequate modeling tools and analysis techniques, and failed to adequately incorporate evaluation of the benefits and costs (including rate impacts) of several other critical elements of the Action Plans, including but not limited to smart grid investments, inter-island or inter-utility transmission, modifications to existing generation units for improved flexibility and efficiency, and the retirement and possible replacement of existing generation. Order No. 32052 at 22, 27-28. The

Commission stated that, "[w]ithout the context and guidance of an approved Action Plan, the Commission is forced to address the substantial challenges facing the HECO Companies through numerous individual contested case and investigatory proceedings, rather than comprehensively in the IRP process." Order No. 32052 at 70-71.

The Commission noted that some of the relevant proceedings that would address the HECO Companies' future plans and operations include the Power Supply Portfolio Reviews, and specifically, an investigatory docket in which the Commission will review each of the HECO Companies' individual PSIPs. The PSIPs, which are pending in Docket 2014-0183, were to include "actionable strategies and implementation plans to expeditiously retire older, less-efficient fossil generation, reduce must-run generation, increase generation flexibility, and adopt new technologies such as demand response and energy storage for ancillary services, and institute operational practice changes, as appropriate, to enable integration of a diverse portfolio of additional low cost renewable energy resources, reduction of energy costs and improvements in generation operational efficiencies." Order No. 32052 at 72-73. The Commission also noted that the contemporaneous order (i.e., April 28, 2014) issued in the RSWG docket identifies a number of system level reliability issues that affect power supply planning and operations and, therefore, were to be addressed in the PSIPs or in other subsequent reliability related studies. Order No. 32052 at 73.

Another pertinent set of proceedings is the various inter-island and inter-utility power transmission reviews, including the Investigation of Whether Oahu-Maui Inter-Island Transmission System May be in the Public Interest, Docket No. 2013-0169. *Opening a Proceeding to Investigate Whether an Oahu- Maui Interisland Transmission*

System May Be in the Public Interest, Docket No. 2013-0169, Order No. 31356 Initiating Proceeding, at 8-9 (July 11, 2013). DBEDT engaged in an economic, technical, and policy analysis and submitted extensive comments to the Commission in that investigation, which concluded that inter-island transmission cable connecting Oahu and Maui is in the public interest.

The DGIP/DER proceedings also provide relevant context. In its April 28, 2014 IRP Order, the Commission stated that it would take various actions to address critical technical, economic, and policy issues associated with distributed renewable resources. In this regard, the Commission directed the HECO Companies to develop and file a DGIP, which was to include strategies and implementation plans for distribution system upgrades and utilization of advanced inverter technical functionality to enable distribution circuit solar photovoltaic ("PV") penetrations to be increased over time in a safe and reliable manner. Order No. 32052 at 75. The Commission also noted that it required the HECO Companies to develop and file a Demand Response Portfolio Plan that implements the directives set forth in the Commission's demand response policy statement and order that was also filed on April 28, 2014 in Docket No. 2007-0341. Other DER-related dockets and actions mentioned by the Commission included the HECO Companies DGIP in Docket No. 2011-0206 (which was subsequently reassigned to Docket No. 2014-0192 pertaining to DER Policies), Feed-in-Tariff Re-examination (Docket No. 2013-0194), Demand Response Policy Statement in Docket No. 2007-0341 and the DER Review. Order No. 32052 at 76. The Commission also noted that it had taken or will take various actions to assess the ability of the HECO Companies to achieve or exceed the RPS targets and the EEPS targets.

As alluded to above, a significant aspect of the Commission's April 28, 2014 IRP Order was the issuance of the Inclinations. In pertinent part, the Commission's Inclinations observed that there was not sufficient evidence of progress by the HECO Companies towards developing and implementing a sustainable business model. Inclinations at 2. The Commission thus offered its perspectives on the vision, business strategies, and regulatory policy changes required to align the HECO Companies' business model with customers' interests and the State's public policy goals. Inclinations at 29. The Commission provided guidance for future business strategy, energy resource planning, and project review in three major areas: (1) creating a 21st century generation system—the need to move with urgency to modernize the generation system on each island grid to integrate clean energy resources that cost less than today's oil-fired generation; (2) creating modern transmission and distribution grids—outlining priorities in order to transform each island's transmission and distribution grids into modern, advanced electrical networks that are capable of integrating greater quantities of customer-sited distributed energy resources and expand the array of energy options for customers to manage their energy usage; and (3) policy and regulatory (including rate structure) reforms needed to achieve Hawaii's clean energy future. Inclinations at 3.

DBEDT submitted comments in the PSIP and DGIP proceedings, as well as in other proceedings during 2014 that were pertinent to the future direction of the HECO Companies' and Hawaii's clean energy future. DBEDT's comments in the PSIP and DGIP proceedings were guided in significant part by the Inclinations and the State's clean energy policy and directives. While the PSIPs represented improvement as compared to the IRP submission, DBEDT was not able to conclude that the PSIPs represent a supportable and optimal mechanism for achieving the State's clean energy goals and directives, due in part to the failure to provide supporting data and analyses, and in part because certain aspects of the PSIPs were not shown to be consistent with, or were contrary to, the State's clean energy policy. As I mentioned above, the PSIPs remain pending before the Commission in Docket No. 2014-0183.

As for the DGIP, DBEDT commented that the HECO Companies' strategies and plans focused on the limitations of their systems and available technologies, and proposed small and incremental steps that fail to align with the State's energy policy directives. On March 31, 2015, the Commission established a statement of issues and procedural schedule to govern the investigation on Distributed Energy Resource Policies. *Instituting a Proceeding to Investigate Distributed Energy Resource Policies*, Docket No. 2014-0192, Order No. 32737, Granting Motions to Intervene, Consolidating and Incorporating Related Dockets, and Establishing Statement of Issues and Procedural Schedule (March 31, 2015) ("Order No. 32737"). That order attached a Commission Staff Report, which found based on a preliminary review, that the DGIP was not sufficiently responsive to the Commission's requirements, and that the HECO Companies compiled a list of potential technical interconnection and integration challenges but did not prioritize mitigation solutions to be employed to allow DER deployment to continue in a timely manner. Order No. 32737 at 30. On June 29, 2015 DBEDT filed its Final Statement of Position with the Commission pursuant to Order No. 32737. Key elements of DBEDT's position include: (1) asserting its support of the Parties' Joint "*Stipulation Setting Forth Proposed Revisions to Rule 14H*"; (2) supporting Hosting Capacity in concept but recognizing that greater disclosure and ongoing transparency is needed prior to its full endorsement; (3) conceptual support for advanced inverter functionality and the implementation of self-supply systems under a fast track interconnection path; (4) a belief that a structure similar to the Companies' proposed transitional distributed generation ("TDG") tariff for Grid-Supply system best meets the PUC's directive; and (5) proposal for a time of use ("TOU") pilot study so that, at the end of the pilot, the utilities will propose TOU rates for the entire population of customers either in an optional, default, or mandatory structure.

Q. Please explain how these regulatory proceedings provide necessary context the Commission should consider in evaluating the Proposed Transaction.

A. The numerous regulatory proceedings discussed above addressed a range of issues related to electric utility planning and operations that are of great interest to the State. In various directives issued in the four April 28, 2014 Orders, the HECO Companies have been required to improve their planning and operational practices and to develop and implement various plans that, among other improvements, will accelerate the integration of substantial amounts of renewable energy onto the State's island grids. In addition, the Inclinations white paper outlined the vision, strategies, and regulatory policy changes necessary to align the HECO Companies' business model with customers' expectations and State energy policy. These regulatory actions demonstrate that significant reviews are currently underway regarding the entire framework of the HECO Companies' future planning, operations, and business model. Consequently, these regulatory actions demonstrate that a comparison to the *status quo* is not an acceptable baseline for judging the merits of NextEra's proposals. Rather, the question of whether NextEra will be fit, willing, and able to perform must be made by comparing NextEra's proposals to a no-transaction future where the State's distribution utilities have concrete, actionable plans for achieving the State's energy goals within specified time frames.

Q. Why is it important for the Commission to consider the merits of the Proposed Transaction with this legislative and regulatory context in mind?

A. The key takeaway from this discussion of complementary legislative and regulatory initiatives is this: The public interest inquiry should hinge on whether NextEra has demonstrated that it will provide significant, quantifiable benefits that are additive to the benefits that the State would realize by virtue of the fact that the distribution utilities in a no-transaction future are reasonably expected to have: (1) developed a business case that demonstrates the ability to achieve a desired end-state objective of meeting a 100% RPS by 2045, as required by Act 97; (2) formulated a decision framework for implementing that business case (consistent with the clear guidance provided by the Commission's Inclinations); and (3) identified assumptions and a timeline for actions that will position utility to meet the State's clean energy goals (as required as part of the PSIPs and DGIP/DER docket).

I note that this position is consistent with Governor Ige's message from his State of the State address, where he stated that Hawaii:

> needs a sustainable and reliable source of energy. Importing fossil fuel remains one of our greatest weaknesses and we simply must move to reduce our dependence on it. We have the locally generated resources that can allow us to be self-sufficient. We just need to move in concert toward that goal. As our largest provider of energy, Hawaiian Electric will have a lot to do with our success or failure.

The Governor went on to note the important role the Commission will play in considering the Proposed Transaction in light of these policy directives.

In short, this legislative and regulatory context establishes that the appropriate baseline to which the purported benefits of the Proposed Transaction should be compared is not the HECO Companies' past performance. The appropriate baseline to which the purported benefits of the Proposed Transaction should be compared is not even the performance the HECO Companies may project into the future. Rather, the appropriate baseline to which the purported benefits of the Proposed Transaction should be compared is how the State expects the utility of the Hawaii's future to perform in furtherance of the State's clean energy policies.

Q. Have the Applicants offered testimony demonstrating the important role that this legislative and regulatory context plays in this proceeding?

A. Yes. Mr. Gleason acknowledged that "[t]he State's clean energy goals are determined by government, including the legislature, the executive branch, and the Commission," and that the "the *primary role* of the utility is to develop plans to achieve those goals…." Applicants Exhibit-7 at 32:3-6 (emphasis added).

Q. With this context in mind, please summarize DBEDT's general view of the Proposed Transaction.

A. DBEDT comes into this proceeding with an open mind. If anything, DBEDT wanted to be in a position to support the Proposed Transaction. In particular, DBEDT was heartened that NextEra's representations about its ability to accelerate and strengthen Hawaii's clean energy transformation (*see, e.g.*, Applicants Exhibit-7 at 15:15-17) are consistent with the State's policies that, as discussed above, establish the contextual backdrop for undertaking the public interest inquiry in this proceeding. However, the public interest and DBEDT's statutory responsibilities do not permit it to accept

NextEra's representations at face value. Consequently, DBEDT conducted a thorough review of the merits of the Application and the basis for the Applicants' claims.

Unfortunately, as a result of that review, DBEDT is compelled to conclude that the Proposed Transaction has not been shown to be in the public interest. The principal deficiency with the proposal, as it stands at this time, is that NextEra has been unable or unwilling to provide any specific detail as to how it will actually accelerate and strengthen Hawaii's clean energy transformation. Given that accelerating and strengthening Hawaii's clean energy transformation is part and parcel of the public interest inquiry the Commission is undertaking in this proceeding, the lack of detail is a fatal flaw.

NextEra simply has no concrete plans for meeting the State's clean energy goals. Mr. Gleason answers "No" when asked whether NextEra has clean energy plans that are different from those of the HECO Companies. *Id.* at 34:19-21. Quite succinctly, Mr. Gleason explains that NextEra "has nothing further to add" to the HECO Companies' existing plans. Applicants Exhibit-7 at 35:14-16; *see also* Applicants Response to DBEDT-IR-40 (explaining that "NextEra Energy does not have a separate capital investment plan from that of the Hawaiian Electric Companies"). Rather, the totality of the purported benefits can be boiled down to assumptions about the positive impact of NextEra's technical, managerial, and financial resources. Applicants Exhibit 7 at 16:2-5; see also Applicants Exhibit-1 at 6:1-3 (where Mr. Oshima testifies that NextEra's ability "to bring its experience and resources to bear" is a "key benefit" of the Proposed Transaction). When DBEDT asked for a quantification of this key benefit in discovery, the Applicants were unable or unwilling to provide any clear quantification or explanation showing how this purported "key benefit" actually translates to tangible benefits to the HECO Companies' customers. *See, e.g.*, Applicants Responses to DBEDT-IR-11, DBEDT-IR-31, DBEDT-IR-138.

At this point in the proceeding, DBEDT cannot conclude that the Proposed Transaction advances the legislative and regulatory policies and initiatives discussed herein. Consequently, DBEDT cannot conclude that the Proposed Transaction is in the public interest. The detailed rationale for DBEDT's conclusions is set forth in Part IV below and in the Answering and Direct Testimony of Karl Rábago.

IV. DISCUSSION OF SPECIFIED ISSUES FROM ORDER NO. 32739

Q. Why is it important for you to comment on behalf of DBEDT on Issues 1, 2, 3, and 6 as listed in the Commission's Statement of Issues in Order No. 32739?

A. As the State's Energy Administrator, I am tasked with implementing Hawaii's energy plan. In furtherance of this obligation, it is my responsibility to evaluate any proposed action impacting the State's energy policy to ensure that it is consistent with and advances that policy.

In addition, Hawaii's geography and culture is unique and vastly different from the other regions in which NextEra has a presence. As such, the change of control, if approved, will have an epochal impact on the State, including critical matters related to the State's clean energy objectives and on the State's economy and business development. Since the Commission's issues 1, 2, 3, and 6 pertain directly to the State's economy, communities, ratepayers, business and financial risks, clean energy goals, competition in various energy markets, local sensitivities, and interests of the State, DBEDT can provide its expertise and perspective to assist the Commission and the parties in determining whether the Proposed Transaction is in the public interest. DBEDT can also offer its unique perspective and assistance on identifying any necessary conditions to ensure that the Proposed Transaction is not detrimental to the interests of the HECO Companies' ratepayers or the State.

Finally, NextEra is asking for a lot—approval to acquire near-monopoly control of the provision of transmission and distribution service to Hawaii's electric customers. If the Proposed Transaction is approved, NextEra would serve approximately 95% of the State's population and employ thousands of people within the State. DBEDT takes its statutory obligations very seriously. Thus, such a significant request, particularly at this pivotal moment in the State's energy transformation, requires close scrutiny. For those reasons, I felt it was important to offer my perspective as the State's Energy Administrator on Issues 1, 2, 3, and 6. Mr. Rábago's perspective complements my perspective by focusing on the other side of the coin, i.e., whether NextEra's experience in other States offers support for its claims about its ability to act on its proposals here.

<u>Issue 1. Whether the Proposed Transaction is in the public interest</u>.

Q. As a general matter, does DBEDT believe the Proposed Transaction is in the Public Interest?

A. I discuss specific concerns with the proposed Transaction in regard to the sub-parts to Issue 1. However, four related and overarching concerns illustrate why, as a general matter, DBEDT concludes that the Proposed Transaction, as currently constituted, is not in the public interest. Consistent with the discussion above regarding the establishment of an objective baseline against which NextEra's proposals can be compared, each of these concerns relates to the manner in which NextEra has described (or failed to describe) its approach to planning to meet the State's clean energy goals.

Q. What is your first overarching concern with the Proposed Transaction?

A. First, DBEDT is troubled by the Applicants' view that reaching a 70% RPS by 2040 and a 100% RPS by 2045 "may prove to be very aggressive." Applicants Response to HREA-IR-1 at 2. Based on this view, the Applicants only commit to being "well on their way to greater than 65% RPS by 2030, *if* they are able to execute the PSIPs that were filed with the Commission." *Id.* at 2 (emphasis added). As indicated above, Act 97 provided great clarity as to the end state the State's electric utilities must plan to achieve. A 65% RPS by 2030 must not be the end state the HECO Companies are planning to meet given that clear direction. DBEDT believes that the public interest requires the acquiring utility to show how it will meet the State's clean energy goals, i.e., a 100% renewable future. Based on NextEra's decision to make a first impression by claiming that the State's energy policies may be too difficult to meet, DBEDT is concerned that NextEra has not proven that it has internalized local issues into its decision-making processes.

Q. What is your second overarching concern?

A. Although it is a fundamental issue, even if we were to set aside the specific 100% RPS metric, DBEDT is disappointed that NextEra failed to articulate a clear vision for ensuring that its takeover of HEI will achieve *any* level of improved performance. Rather, the Applicants' commitment to meet a 65% RPS by 2030, while laudable, is heavily caveated as only being achievable if the PSIPs are approved. As DBEDT has demonstrated in comments submitted in Docket No. 2014-0138 governing the PSIPs, the

PSIPs are deficient and inconsistent with the State's energy policy directives. Indeed, the Applicants acknowledge that there is "uncertainty" as to whether the PSIPs "will be supported by key stakeholders and decision makers." Thus, even if we could overlook the fact that the public interest establishes a 100% RPS by 2045 as the minimum baseline, it is reasonable to assume that the condition precedent to meeting the lower 65% RPS (i.e., executing the PSIPs as filed) will not even occur. Thus, it is not clear that the Applicants have proposed any firm, enforceable commitments with respect to achieving a clean energy future.

Q. Please identify your third overarching concern.

A. While NextEra generally commits to strengthen and accelerate the HECO Companies' clean energy transformation, it fails to identify the specific plans and projects it would undertake to deliver on that commitment. In their Application, HEI and NextEra expressly asserted that they are unable to identify the specific plans and projects that NextEra would implement as the owner of HEI to strengthen and accelerate HEI's clean energy transformation unless and until the Proposed Transaction is approved. Application at 42, n.57. DBEDT's Motion to Intervene thus posited that the Application lacks the detail necessary to fully evaluate and understand the nature of the proposed change of control. In its Direct Testimony, NextEra confirmed that it does not have clean energy plans that are different from those of the HECO Companies. Applicants Exhibit-7 at 34:19-21. Since the filing of both the Application and testimony, numerous parties, including DBEDT, have propounded hundreds of interrogatories, many of which seek to further probe and understand the Application's impact on Hawaii's transition to a clean energy future. Despite the hundreds of pages of responses, the Applicants concede that they cannot provide any insight into their purported plans to strengthen and accelerate HEI's clean energy transformation relative to what would be accomplished on a standalone basis. *See, e.g.*, Applicants Responses to DBEDT-IR-10 (where NextEra was asked to, but did not or could not, quantify the incremental benefit that NextEra Energy will provide in relation to reducing the use of fuel oil); DBEDT-IR-17 (where the Applicants admit that they "have not identified or developed measurement tools for quantifying how NextEra Energy will strengthen and accelerate the Hawaiian Electric Companies' clean energy transformation relative to what would be accomplished on a standalone basis"); DBEDT-IR-40 (where NextEra admits that it "does not have a separate capital investment plan from that of the Hawaiian Electric Companies"); DBEDT-IR-84 (where the Applicants concede that they have not yet identified any incremental benefits associated with smart grid deployment); PUC-IR-153; PUC-IR-62, CA-IR-209; and CA-IR-230.

At most, NextEra has "committed" to help facilitate and accelerate the HECO Companies' current plans. Applicants Response to TASC-IR-3; *see also* Applicants Response to AES-IR-10(c) ("NextEra Energy has consistently stated its support of the Hawaiian Electric Companies' plans."). DBEDT is concerned with such a commitment. The HECO Companies' plans contain numerous flaws. The Commission Staff has already determined that the HECO Companies' proposed plans as set forth in the DGIP did not adequately address the immediate or long-term issues associated with integrating distributed energy resources and achieving the State's energy goals. Order No. 32737, Staff Report at 12. DBEDT has also expressed significant concerns with the PSIPs, including the role of LNG and the DG 2.0 proposal, which are the two major cornerstones of the HECO Companies' preferred plans in the PSIP filing. In fact, the Applicants acknowledge that "it is not entirely clear that the Power Supply Improvement Plans ('PSIPs') in and of themselves constitute a sustainable business model consistent with the Commission's Inclinations." Applicants Response to DBEDT-IR-140 at 1. As such, it would be unreasonable to permit NextEra to take over control based on a commitment to facilitate these deficient plans. While the PSIP and consolidated DGIP/DER/Rule 14H proceedings are still open and may lead to more reasonable solutions and plans for a successful and compliant energy transformation for the HECO Companies', NextEra's touted benefits of facilitating and accelerating the current plans would not serve the public interest.

Q. Before addressing your fourth overarching concern, please discuss whether NextEra attempted to explain its failure to identify specific plans for strengthening and accelerating the HECO Companies' clean energy transformation?

A. In response to an interrogatory, the Applicants claim that an acquirer cannot be expected to commit the resources to develop a full integration plan before a proposed change of control has been approved. Applicants Response to PUC-IR-92. In consideration of the unprecedented task of achieving a 100% clean energy future in Hawaii, it would be contrary to the public interest and the State's ambitious clean energy goals to permit a change of control to an entity that has yet to sufficiently understand the strengths and limitations in the HECO Companies' respective electric grids, systems, operations, and plans. Applicants Response to CA-IR-209. In any event, the Applicants' response to PUC-IR-92 misses the mark because, to DBEDT's knowledge, no party has asked for a full integration plan. Rather, the Applicants make numerous, affirmative claims about their ability to strengthen and accelerate the HECO Companies' clean energy transformation. *See, e.g.*, Applicants Exhibit-7 at 32:7-8. To ensure those claims had merit, parties asked the Applicants to provide the basis for those claims. The Applicants have not done so. Asking the Applicants to support their factual assertions is a far cry from asking them to develop a full integration plan before a proposed change of control has been approved.

NextEra has also indicated its willingness to file for Commission review its specific plans on how it will strengthen and accelerate the Companies' clean energy transformation following consummation of the proposed change of control. Applicants Exhibit-7 at 35:9-12. The Commission rejected the HECO Companies' IRP for failure to develop a sustainable business model and strategic vision. Based on the Commission's rationale, it would now be imprudent (not to mention an inappropriate shifting of up-front risk to ratepayers) to approve the proposed change of control to an entity that failed to present a clear vision for achieving the very clean energy future it purports to be able to accelerate and strengthen by virtue of the Proposed Transaction.

It is also worth mentioning that, in addition to being important to the State, Hawaii's clean energy transformation demonstrates Hawaii's importance on national and international levels. At this critical time, when the State serves as a test bed for developing and deploying clean energy and environmentally friendly technologies, DBEDT is concerned that the Proposed Transaction may inject uncertainty or a lack of transparency on how the post-transaction utility will serve approximately 95% of the State's consumers. The State seeks to move forward and complete a clean energy transformation. It would be contrary to that objective to inject uncertainty or a lack of transparency on how a post-transaction utility that serves around 95% of the State's consumers, plans on achieving the State's mandates.

Q. Please explain your fourth overarching concern.

A. NextEra claims that it has already undergone the transformation that the HECO Companies are just beginning, and as a result will be able to bring its experiences and resources to bear in ensuring that the HECO Companies' initiatives are completed at the lowest reasonable cost. Applicants Response to PUC-IR-68. Given the unique nature of the issues facing Hawaii, it is not clear that any transformation NextEra undertook directly relates to Hawaii. The Applicants concede that the HECO Companies are facing unprecedented renewable integration challenges at the grid and system-levels. For example, Mr. Gleason acknowledges that "the relative amount of distributed generation in Florida is much less than in Hawaii." Applicants Exhibit-7 at 36:5-6. Mr. Gleason also states that, "from an industry wide perspective, the Hawaiian Electric Companies' interconnection challenges are largely in uncharted territory." Applicants Exhibit-7 at 36:7-9. In discovery, the Applicants admitted that "[n]either NextEra Energy nor Florida Power and Light Company ('FPL') has experience with interconnection challenges comparable to the degree to which Hawai'i has had to address these challenges." Applicants Response to DBEDT-IR-6. Indeed, as of March 31, 2015, FPL only had 2,711 residential net metering customers in its service territory. Applicants Response to DBEDT-IR-28. In contrast, Mr. Oshima explains that "Hawaiian Electric has put Hawai'i on the leading edge of clean energy nationally, successfully integrating rooftop solar with 12 percent of residential customers—including 11,000 new installations in 2014 alone…." Applicants Exhibit-1 at 6:16-18. The difference in penetration levels of distributed generation in Florida and Hawaii are striking given that FPL has more than 4.7 million customers in its Florida service territory (Applicants Exhibit-19 at 2:18-21) and the HECO Companies serve less than 500,000 distribution customers. In the face of this evidence, general statements about financial, technical, and operational experience simply do not suggest that NextEra's work in other states will bring demonstrable benefits to Hawaii.

Q. Please summarize the four overarching concerns that led you to conclude that the Proposed Transaction is not in the public interest.

A. The public interest should require NextEra to demonstrate concrete plans for achieving a 100% RPS by 2045. Not only has NextEra failed to identify any specific plans for complying, it has suggested that it cannot comply. NextEra has also suggested that it could only meet lower renewables targets—targets that are inadequate under the public interest standard—if it follows through with the HECO Companies' plans. Thus, NextEra's ability to meet those lower targets is in question given the flaws in the HECO Companies' plans and the likelihood that certain investments identified in those plans will not be pursued. Moreover, NextEra makes a number of general claims about its ability to strengthen and accelerate Hawaii's clean energy transformation. NextEra even represents that it has completed a similar transformation, and can use its experience to the benefit of Hawaii. When pressed for details, however, NextEra was unable to corroborate or support its claims. Given the fundamental link between these four concerns and the public interest inquiry, I cannot conclude that the Proposed Transaction is in the public interest.

Issue 1.a. Whether approval of the Proposed Transaction would be in the best interests of the State's economy and the communities served by the HECO Companies.

Q. Do you believe that the Proposed Transaction would be in the best interests of the State's economy and the communities served by the HECO Companies?

A. Based on my review of the Application, the testimony and supporting exhibits submitted by the Applicants' witnesses, as well as the Applicants' responses to interrogatories, I am unable to conclude that the Proposed Transaction will be in the best interests of the State's economy and the communities served by the HECO Companies. In addition to the overarching concerns I discussed above, there are several specific reasons for this conclusion.

Q. What is the first reason for your conclusion that the Proposed Transaction is not in the public interest?

A. The first basis for my conclusion relates to the proposed rate freeze. Application at 34-37. While Mr. Oshima cites the four year rate moratorium as an example of how the Proposed Transaction will benefit the State's economy and the communities served by the HECO Companies, (Applicants Exhibit-1 at 14:18-22), I remain concerned that the proposed four year rate freeze may not serve to have a net benefit to the ratepayers and economy in the long run. As proposed, the rate freeze only goes to general base rate cases and the Operations and Maintenance ("O&M") component of the Rate Adjustment Mechanism ("RAM"). *See* Applicants Response to CA-IR-303 at 2. The capital expenditures relating to the PSIPs and DGIP, included in other plans the Commission may approve, or that are necessary to achieve the reliability improvements promised for the future, would continue to be recovered through the RAM. However, any savings related to reductions in O&M would not flow through to ratepayers due to the nature of the proposed rate freeze. Thus, ratepayers could face higher rates associated with capital investments while being deprived of the opportunity to offset those higher costs with O&M savings.

Q. Please discuss the second reason for your conclusion that the Proposed Transaction is not in the public interest.

A. The Applicants' proposal regarding involuntary attrition is not sufficient to provide adequate protections against job losses. In their testimony, the Applicants claim that their commitment is to avoid net involuntary attrition for "*at least* two years post-closing." Applicants Exhibit-7 at 30:21 to 31:3 (emphasis added); *see also* Applicants Exhibit-1 at 16:18-19 (where Mr. Oshima represents there will be no involuntary reductions to the workforce "for at least two years after close"); Applicants Exhibit-33 at 33:3-6 (where Mr. Reed states that NextEra commits to no involuntary attrition for "at least two years). In response to discovery, the Applicants explained that the commitment is, in fact, *capped* at two years. Applicants Response to DBEDT-IR-15 ("The Applicants' commitment with respect to involuntary reductions would be satisfied at the end of two years post-closing.").

Concerned that NextEra may have plans for substantial workforce reduction in two years, DBEDT propounded interrogatories asking NextEra to explain why it did not adopt a commitment beyond two years. NextEra responded by saying it determined that a longer period, such as three years, was not appropriate. Applicants Response to DBEDT-IR-139. This response exacerbates, rather than alleviates, DBEDT's concern about forthcoming workforce reductions.

Moreover, there are currently a number of open or vacant positions at the HECO Companies. Applicants Response to DBEDT-IR-117. NextEra could eliminate those positions rather than provide jobs to residents of Hawaii. NextEra made clear its view that eliminating open positions would not constitute an involuntary workforce reduction. Applicants Response to DBEDT-IR-118.

In short, NextEra's proposal, and the implications stemming therefrom, suggest workforce reductions that may not occur in a no-transaction future. Such reductions could be harmful to the State's economy and NextEra has done nothing to allay these concerns.

Q. Please continue by discussing additional reasons for your conclusion that the Proposed Transaction is not in the public interest.

A. I also take issue with the Applicants' claim that their proposed improvements to the HECO Companies' reliability of electric service, which is to be measured based on a baseline year to be established post-close, is a benefit to the economy and communities. Applicants Exhibit-7 at 15:6-13. The speculative nature of this future commitment is not concrete enough to meet the public interest standard. It shifts risk to ratepayers because reliability benefits would not be realized until some unspecified point in the future, whereas the Applicants would have already obtained the regulatory approval they seek.

Q. Did NextEra explain why its proposal to improve reliability was deferred to the future?

A. Yes. According to NextEra, "[t]he baseline can only feasibly be developed after NextEra Energy has sufficient time and access to information and resources to better understand the strengths and any limitations in the Hawaiian Electric Companies' respective electric grids, systems, operations, and plans, and to assure a complete understanding of how the Hawaiian Electric Companies are currently measuring reliability." Applicants Response to DBEDT-IR-34. It is not clear that this claim has merit. In recent utility-acquisition proceedings in other jurisdictions, the acquiring entity proposed specific metrics for improving reliability before the transaction was approved.[3] It is not clear why NextEra could not do so.

Q. Please comment on why the Proposed Transaction is not in the public interest with respect to renewables integration.

A. As explained in Part III above, the State's policy directive is that the electric distribution providers should identify ways to maximize the integration of renewable resources while maintaining reliability. The question of the "maximum" amount of renewable resources each of the HECO Companies' grids can reliably accommodate is still unclear despite the various proceedings discussed in the background section above that endeavored to get the HECO Companies to answer this fundamental question. For instance, in DBEDT's view, the DGIP did not fully address how much additional distributed generation can be accommodated on each circuit of the HECO Companies' systems either currently or upon implementation of actions and strategies that would be designed to promote the use of distributed generation as an ancillary service and a demand response option, while mitigating any adverse reliability and safety impacts that are introduced through higher levels of DER penetration on each circuit. As the Commission Staff stated in its report

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[3] Maryland Public Service Commission, Case No. 9361, Order No. 86990 at A-13 to A-14 ("Maryland Order No. 86990"), available at:

http://webapp.psc.state.md.us/newIntranet/Casenum/NewIndex3_VOpenFile.cfm?ServerFilePath=C:\Casenum\9300-9399\9361\\271.pdf.

that was attached to Order No. 32737, "the utility's proposed [DGIP] plans do not adequately address the immediate or long-term issues associated with integrating distributed energy resources and achieving the state's energy goals."[4] Since the filing of the DGIP, however, the HECO Companies have been able to address the backlog of residential rooftop solar projects awaiting approval in Maui and Hawaii Island that had been previously awaiting approval since at least October 2014, and promised to complete processing 90% of the pending applications in Oahu by the end of April 2015. This illustrates that it is possible to reliably integrate more renewable resources into the distribution grid of the HECO Companies than previously believed.

As such, I submit that the appropriate baseline to measure the renewable integration benefits of the Proposed Transaction is not based on recent history or even the HECO Companies' previous projections about the levels of renewables the system can accommodate. Rather, the appropriate baseline to which the Proposed Transaction should be compared looks forward, and is based on a more complete understanding of the ability of the HECO Companies' electric grids to reliably integrate a greater volume of renewable and distributed energy resources. NextEra has presented no such comparison. It also has not submitted any concrete plans that demonstrate how it proposes to integrate renewables in pursuit of the desired end state of a 100% renewable future.

[4] Staff Report and Proposal, Docket No. 2014-0192 at 12 (March 31, 2015), available at http://cca.hawaii.gov/dca/files/2015/04/2014-0192-Order-32737.pdf.

Q. Do you have any problems with the analysis provided by the testimony of John Reed regarding purported savings resulting from the Proposed Transaction?

A. Yes.[5] Mr. Reed states that savings resulting from the Proposed Transaction will be significant. Mr. Reed finds that NextEra could "achieve *potentially* hundreds of millions of dollars" in savings from a lower cost of debt for completing the approximately $8 billion of potential investments identified in the PSIPs. Applicants Exhibit-33 at 21:12-13 (emphasis added). The import of this figure is difficult to ascertain because it comes directly from the PSIPs. As I have thoroughly explained in this testimony, the HECO Companies failed to demonstrate that the expenditures and projects identified in their PSIPs are in the public interest and further the State's energy policy directives. The PSIPs simply do not represent an optimal plan of capital investments to achieve a generation portfolio representing 100% renewable energy in the electric sector by 2045. In addition, the proposed capital investments in the PSIPs were also not optimized by the HECO Companies to be achieved at the lowest cost produced by market signals. Therefore, because the $8 billion of investments included in the PSIPs do not represent viable investments, Mr. Reed's estimation of savings in complying with the PSIPs have little, if any, significance. While I will not repeat these points, I discussed in Part III the Applicants failure to provide a meaningful quantification of "financial" benefits that purportedly will be achieved.

Q. Do you take issue with any other aspect of Mr. Reed's analysis?

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[5] While I will not repeat these criticisms, they are equally applicable to Issue 2.a.

A. Yes. I have some concerns about the limitations of the IMPLAN model that Mr. Reed used to perform his analysis. While DBEDT acknowledges that the IMPLAN model is a useful tool for macroeconomic modeling, the IMPLAN model is of limited value when faced with a question like the public interest inquiry the Commission is facing in this proceeding.

Q. Please explain Mr. Reed's use of the IMPLAN model.

A. The IMPLAN model identifies directs benefits associated with an economic input, and then estimates indirect and induced effects stemming from those direct benefits. *Id.* at 40:17 to 41:18. Mr. Reed used the IMPLAN model to project the impact that $100 million in purported rate reductions will have on Hawaii's economy as a whole if spread evenly over a four year period. Applicants' Exhibit-7 at 39:7-9. Plugging his estimated $100 million in savings into the IMPLAN model as the input, Mr. Reed projects total, direct, indirect, and induced benefits of 675 jobs and $109 million in benefits.

Q. What are your concerns with Mr. Reed's IMPLAN analysis?

A. First, the IMPLAN model is not an appropriate tool for comparing a "future" that is based on approval of the Proposed Transaction to a no-transaction future. Even Mr. Reed acknowledges that his IMPLAN "analysis is not a forecast." Applicants Response to DBEDT-IR-122. Thus, it does not provide a basis for comparing what is likely to happen if the Proposed Transaction is approved to what is likely to happen if the Proposed Transaction is not approved. It simply selects one input (i.e., a purported $100 million injection) and ignores all other possible inputs. For example, it is reasonable to assume that, at the end of two years, NextEra will reduce the size of the workforce. Mr. Reed's IMPLAN analysis does not account for that loss of economic activity. Applicants

Response to DBEDT-IR-121. Also, the Applicants represent that they will improve reliability performance (though they provide no detail explaining how they will achieve such improvement). There will be costs to achieve that improved level of reliability, but Mr. Reed's analysis does not account for such costs.

Second, I have concerns about Mr. Reed's characterization of the purported $100 million input as "cumulative rate reductions." Applicants Exhibit-7 at 39:8-9. This characterization implies that customers will receive a $100 million benefit in the form of lower rates. However, that is not the case. The Applicants confirmed in discovery that the $100 million figure is anticipated "synergy savings." Applicants Response to DBEDT-IR-88. When asked to identify the portion of that $100 million in projected synergy savings that would flow to ratepayers, the Applicants stated that "[n]either Concentric [Mr. Reed's firm] nor NextEra Energy has developed a detailed savings estimate to determine what the timing, magnitude, nature and structure of these savings will be, which would be necessary to determine exactly how these savings would flow through to customers." *Id.* (emphasis added); *see also* Applicants Response to DBEDT-IR-90 (stating that the Applicants "have not yet developed a detailed estimate of such savings," but rather have only "prepared a preliminary assessment of the potential savings"). When DBEDT pressed the Applicants on this issue, they conceded that the synergy savings "are expected to be shared between ratepayers and shareholders." Applicants Response to DBEDT-IR-114.

Third, I take issue with the $100 million figure itself. This figure was not calculated based on a detailed study of savings, which, as indicated directly above, the Applicants have not performed. Rather, as the Applicants put it, the $100 million figure is an "*assumed* level of benefits." Applicants Response to DBEDT-IR-122 (emphasis added). DBEDT pressed the Applicants to understand the basis for, and merits of, that assumption. In response to interrogatories, the Applicants explained that "[t]he IMPLAN analysis modeled all of the impacts to the Hawai'i economy of a representative $100 million rate benefit associated with the merger *without any specific assumptions regarding the origins of those cost reductions*." Applicants Response to DBEDT-IR-120 (emphasis added). In other words, the Applicants simply selected $100 million as the input in order to derive their benefits analysis.

Q. Please comment on the proposals for corporate and charitable giving.

A. While I appreciate Mr. Oshima's assertion that NextEra intends to maintain the HECO Companies' current level of corporate and charitable giving in Hawaii's communities, "[n]one of the HECO Companies had or have any plans to reduce levels of support for the community that would occur without the transaction." Applicants Response to DBEDT-IR-13. Therefore, at best, this commitment simply maintains the *status quo*. Indeed, the Applicants admit that the proposal relating to charitable giving is intended to "assur[e] the Commission and stakeholders that the merger will not adversely affect the current state of affairs." Applicants Response to DBEDT-IR-37 at 1; *see also* Applicants Response to CA-IR-177 (where NextEra concedes that it is unwilling to increase both NextEra's and HEI's current community support if the proposed change of control is approved). As discussed herein, and in the testimony of DBEDT's witness Mr. Rábago, the public interest standard cannot be met by demonstrating that the proposal does not adversely affect the current state of affairs.

At worst, however, NextEra's commitment to charitable giving may degrade the *status quo* because it is not governed by any time requirement. Applicants Response to DBEDT-IR-60; Applicants Response to PUC-IR-81. As such, NextEra could terminate this obligation the day after the Proposed Transaction is approved without violating any proposed "commitment."

Q. Please summarize your conclusions with respect to Issue 1.a.

A. The above-stated reasons, in addition to the overarching concerns I express regarding Issue 1, lead me to the unavoidable conclusion that the Applicants have not shown the Proposed Transaction to be consistent with the public interest.

Issue 1.b. Whether the Proposed Transaction, if approved, provides significant, quantifiable benefits to the HECO Companies' ratepayers in both the short and the long term beyond those proposed by the HECO Companies in recent regulatory filings.

Q. Do you believe that the Proposed Transaction, if approved, would provide significant quantifiable benefits to the HECO Companies' ratepayers in both the short and the long term beyond those proposed by the HECO Companies' in recent regulatory filings?

A. No. I address problems with NextEra's lack of concrete plans, reliance on the PSIPs above, and Mr. Rábago's Answering and Direct Testimony also addresses this issue on DBEDT's behalf. To avoid burdening the record, I will not reiterate those points here. Rather, I will only reiterate, in the context of Issue 1.b., the critical point about the appropriate baseline for considering NextEra's proposal—whether the Proposed Transaction provides significant, quantifiable benefits to ratepayers in both the short and long term should be based, not on benefits relative to the current state of the industry or the rates (which are the highest in the country), but on a future where the State's utility is performing in a manner that is fully consistent with the State's clean energy policies and directives. The State should expect its electric distribution utilities to meet State policies and directives, and any projections that fall short of those projections should not be used as the baseline for comparing whether NextEra will be a better performer. To do otherwise would create a perverse incentive for poor performance and inappropriately inflate the "benefit" of improved performance.

Issue 1.c. Whether the proposed transaction will impact the ability of the HECO Companies' employees to provide safe, adequate, and reliable service at reasonable cost.

Q. Please comment on Issue 1.c.

A. As I discussed above with respect to Issue 1.a., I am concerned about the potential for workforce reductions. I will not repeat all of those concerns here. However, based on the lack of any concrete plans explaining how NextEra would operate the HECO Companies consistent with the State's energy policies, I cannot conclude that the Proposed Transaction will have a positive impact on the ability of the HECO Companies' employees to provide safe, adequate, and reliable service at reasonable cost. In fact, any such impact may be negative due to the concerns I identified.

Issue 1.d. Whether the proposed financing and corporate restructuring proposed in the Application is reasonable.

Q. Following consummation of the Proposed Transaction, how will the various corporations be structured?

A. If the Proposed Transaction is approved, NextEra's wholly-owned subsidiary, named Hawaiian Electric Holdings, LLC, will become the parent corporation of HEI. NextEra will act as the sole manager of Hawaiian Electric Holdings, LLC. Application at 19-20; *id.*, Exhibit 2 at 5. Under Hawaiian Electric Holdings, LLC, the three HEI distribution utilities will collectively become the third principal business within NextEra's corporate structure, along with FPL and NextEra Energy Capital Holdings. Application at 28; *id.*, Exhibit 6. Following consummation of the Proposed Transaction, HEI's Board of Directors would be dissolved. Application at 33. The duties and fiduciary obligations of HEI's Board of Directors would become the responsibility of NextEra's Board of Directors. Applicants Response to PUC-IR-84.

Q. Explain the commitments regarding post-closing governance and local management that NextEra proposes.

A. NextEra intends to replace the HECO Companies' Board of Directors with a local management committee that would meet quarterly to provide input on matters of local interest. Application at 33. The local management committee would not have the same duties and fiduciary obligations as HEI's current Board of Directors, which would be dissolved following consummation of the Proposed Transaction. Instead, NextEra states the purpose of the local management committee would "be to provide input to the President and CEO of [HEI] on matters of local and community interest." Applicants Response to PUC-IR-84. NextEra states, though it does not commit, that the local management committee would also be responsible for preparing the capital and operating budgets of HEI, which would be subject to the review of NextEra's Chairman and CEO and the approval of NextEra's Board of Directors. Applicants Response to CA-IR-319. NextEra anticipates the advisory board to have between six and 12 members who would "have substantial ties to the Hawai'i community." Application at 33.

In addition, under its governance commitment, NextEra states that the president of HEI would report to the Chairman and CEO of NextEra, who would be located in Juno Beach, Florida. Applicants Response to PUC-IR-80.

Q. Does NextEra commit to any other governance or local management conditions?

A. No. NextEra offers no further governance or local management conditions. NextEra states that it is not able to indicate planned executive management positions, what employees would occupy those positions, where those positions would be stationed, or any other further commitments. Applicants Response to CA-IR-28 (Supplemental).

Q. For what time period does NextEra propose to condition its governance and local management commitments?

A. NextEra has provided no specific timeframe for which it will comply with its governance and local management commitments. In fact, NextEra repeatedly emphasized that there is no timeframe associated with its "commitment" to maintain local governance and management. It is telling that, in one interrogatory response, the Applicants saw fit to state, on five different occasions, that there is no time period associated with these commitments: (1) stating that the "Applicants would like to clarify that there is no timeframe associated with NextEra Energy's commitment to maintain local management;" (2) explaining "there is not a direct relationship between the two-year commitment for no involuntary workforce reductions and the separate commitment that the Hawaiian Electric Companies will be locally managed from their existing operating locations;" (3) reiterating that "there is no timeframe associated with the proposed condition related to local management; (4) reiterating that "[n]either the condition nor the commitments are time bound; and (5) discussing "the lack of a specific timeframe." Applicants Response to PUC-IR-9 at 1-3.

Q. What benefits does NextEra subscribe to its corporate governance and local management commitments?

A. As indicated above, HEI's president and the proposed local management committee would report to NextEra's CEO. NextEra claims this relationship would permit HEI to receive the benefit of guidance and experience of NextEra's CEO and the other members of NextEra's management team. Applicants Response to PUC-IR-9. As another purported benefit, NextEra claims the local management committee would assist NextEra in receiving advice and counsel from local communities on matters of local interest. Applicants' Exhibit-7 at 50:8-12. NextEra also claims as benefits the following:

- Its active support of local communities;
- Its need to build partnerships to conduct business in culturally respectful and environmentally sensitive manners; and
- HEI's continued headquarter location in Honolulu and continued operation from existing locations.

Applicants Exhibit-7 at 22-23.

Q. Do you agree that these corporate governance and local management commitments constitute direct, quantifiable, tangible benefits to ratepayers that result from the Proposed Transaction?

A. No. NextEra's proposal fails to meet even the *status quo*, not to mention the applicable public interest standard, which requires incremental benefits.

Q. How do NextEra's corporate governance-type commitments fail to maintain the *status quo*?

A. First, HEI will lose its Board of Directors. HEI's Board of Directors has been traditionally composed of business leaders with deep ties to the Hawaiian energy and business landscape.[6] The responsibilities of HEI's Board of Directors will be transferred to NextEra's Florida-based CEO and Board of Directors. NextEra has not shown that its executive management will be able to maintain the same level of appreciation and knowledge of Hawaii's distinct energy policy goals. I view the replacement of HEI's Board of Directors with NextEra's Board of Directors as a direct loss to ratepayers.

Second, HEI will lose its ability to independently develop its own business plans and operating budgets. NextEra states its proposed local management committee may be responsible for preparing capital and operating budgets of HEI for the review and approval of NextEra. However, even assuming the local management committee undertakes such tasks, NextEra will supplant HEI's ability to independently approve business plans and operating budgets for its own operations. Indeed, the very purpose of the proposed change of control is to provide NextEra such authority. This loss of control is a reduction of benefits to ratepayers for which NextEra's commitments fail to maintain the *status quo*.

[6] *See, e.g.*, HEI Press Release: Alan Oshima Named President and CEO of Hawaiian Electric Company (September 10, 2014), available at: http://www.hawaiianelectric.com/heco/_hidden_Hidden/CorpComm/Alan-Oshima-Named-President-and-CEO-of-Hawaiian-Electric-Company?cpsextcurrchannel=1.

Third, NextEra's governance-type commitments have no time durations. Therefore, to the extent its commitments mitigate any of the corporate-governance reductions to ratepayers, it is unknown for how long such mitigation would be in effect.

Fourth, even if the local management committee were to have some say in operations, it would appear that with this structure, there would then be two (2) layers of oversight, one of the local management committee and the other at the NextEra Board of Directors level.

Q. What is your conclusion of NextEra's corporate governance-type commitments?

A. There is clearly the potential for harm in transferring ultimate authority to a Florida-based company. NextEra's proposed governance type-commitments do not mitigate that harm, provide meaningful accountability measures, or even maintain the *status quo*. Therefore, DBEDT cannot conclude that this aspect of the Proposed Transaction is in the public interest.

Issue 1.f. Whether adequate safeguards exist to protect the HECO Companies' ratepayers from any business and financial risks associated with the operations of NextEra and/or any of its affiliates.

Q. Explain what safeguards NextEra proposes to protect ratepayers from business and financial risks associated with operations of NextEra and/or any of its affiliates.

A. NextEra purports to have proposed multiple safeguards to protect ratepayers from certain business and financial risks associated with NextEra's ownership of HEI. Among others, these safeguards include foregoing the recovery of acquisition premium and transition costs, prohibiting loans between HEI, NextEra, and NextEra's subsidiaries without Commission approval, and requiring HEI to maintain its debt separate and apart from NextEra and its affiliates. *See, e.g.*, Application at 38-39.

Q. What is your position on these proposed safeguards?

A. As I have stressed throughout this testimony, DBEDT has the responsibility to ensure that the State's energy policy goals will be adhered to and furthered. NextEra's proposed safeguards to protect ratepayers from business and financial risks associated with the Proposed Transaction are important components of the Commission's evaluation of whether the transaction furthers the public interest. However, DBEDT takes this opportunity to focus on those specific State energy policy goals and objectives that are directly implicated by the Proposed Transaction. As such, I do not explicitly address the merits of NextEra's proposals. I do want to point out the lack of any accounting or reporting mechanisms to ensure compliance with these purported commitments.

Issue 1.g. Whether the Proposed Transaction, if approved, will enhance or detrimentally impact the State's clean energy goals.

Q. Have the Applicants demonstrated that the proposed change of control will be consistent with or enhance the State's clean energy goals?

A. No. As indicated above with respect to Issue 1, the Applicants have failed to articulate a clear vision for ensuring that NextEra's takeover of HEI will advance the State's energy policy goals. While NextEra represents that it will strengthen and accelerate the HECO Companies' clean energy transformation, it is unable or unwilling to identify any specific plans and projects that the Applicants would implement or undertake in furtherance of Hawaii's clean energy transformation. I will not repeat that discussion here, but it applies equally to Issue 1.g. Rather, the following discussion focuses on considering the Proposed Transaction with regard to the five guiding directives I identified in Part III above.

Q. You have emphasized that a crucial component of determining whether the Proposed Transaction is in the public interest is to determine whether the Application is consistent with or advances the State's energy policy directives. Is the Application consistent with the State's first energy directive of developing a diversified energy portfolio that maximizes renewable generation?

A. The Application lacks detail to demonstrate whether and how the Applicants will develop a diversified energy portfolio that maximizes renewable generation. The Applicants state that unless and until the proposed change of control is approved, NextEra will not be able to identify the specific plans and projects that NextEra would implement to accelerate and facilitate the clean energy transformation. Applicants Response to CA-IR-140. The Applicants also state that NextEra does not have clean energy plans that are different from those of the HECO Companies. Applicants Response to TASC-IR-4.

The Applicants claim that the proposed change of control "will help facilitate and accelerate the [HEI] Companies' plans for an equitable and inclusive clean energy future at a lower cost than otherwise would have been the case, absent the Proposed Change of Control." Applicants Response to TASC-IR-3. To the extent that the Applicants plan on implementing the proposals in the PSIPs and DGIP filing, DBEDT has already explained how those filings are not consistent with the State's energy objective of ensuring a diversified energy portfolio that will accomplish the integration of substantial amounts of variable renewable energy resources, in a manner consistent with the State's clean energy objectives. Perhaps in recognition of the numerous concerns expressed with the proposals in the PSIPs and DGIP filings, including the concerns expressed in the

Commission Staff's Report in the DER proceeding, NextEra claims that there may be room for improvement in the HECO Companies' existing plans, (Applicants Response to TASC-IR-4) and states that the PSIPs are "not set in stone." Applicants Response to PUC-IR-68. However, NextEra refuses to or cannot identify the specific plans it would implement and those that it would improve. Applicants Response to TASC-IR-4.

NextEra believes that the benefits of the Proposed Transaction "do not necessarily derive from superior plans, but rather from the enhanced capabilities that will enable superior execution." Applicants Response to TASC-IR-4. DBEDT does not agree with this proposition as the resource plans must first be consistent with the State's energy policy directives before they are executed. For instance, even if the DG 2.0 proposal discussed in the PSIPs and DGIP filings is perfectly executed, that does not make the underlying proposal any more reasonable.

As another example, the Applicants assert that they "envision using LNG only as a transitional measure while the Companies continue their clean energy transformation." Applicants Response to CA-IR-44. Indeed, in discovery, the HECO Companies stated that they "currently envision LNG as a transitional measure for a time period of approximately 20 to 25 years." Applicants Response to DBEDT-IR-21. Given the PSIPs' treatment of LNG as a long-term solution, and the lack of detailed cost support, NextEra's ability to execute the plans in the PSIPs is not consistent with the public interest.

Q. Is the Proposed Transaction consistent with, or will it advance, the second energy policy directive—connecting and modernizing the State's grids?

A. The Application does not mention the clear disconnect between the HECO Companies' recent assertion in the PSIPs proceeding that "[a] grid tie connecting the electric grids of Oahu and Maui would not be cost effective" (HECO PSIP at 7-3) and NextEra's proposition in Docket No. 2013-0169 that the Oahu-Maui grid tie is in the best interests of the State. DBEDT's analysis in Docket No. 2013-0169 demonstrated that an Oahu-Maui Interisland Transmission System is in the public interest. Among other things, DBEDT's analysis showed that connecting the electricity grids of Maui and Oahu with a 200 MW High Voltage Direct Current cable would benefit ratepayers on Oahu and Maui Island by reducing electricity rates and provide more stable electricity rates due to reduced exposure to oil pricing volatility. This two-way grid tie would also provide benefits to the environment, including: (1) reducing pollution from less oil being burned by conventional fuel electric generating units; (2) allowing for the retirement of older, inefficient petroleum-based power plants; and (3) reducing the cost of environmental compliance and carbon pollution. DBEDT's analysis of the grid tie also identified benefits to renewable energy goals, including helping the State meet and exceed its mandated renewable energy goals.

In response to the HECO Companies' PSIPs filings, on October 6, 2014, NextEra Energy Hawaii, LLC ("NEEH") submitted comments seeking to understand why the HECO Companies' conclusion regarding the benefits of an inter-island cable differed from those reached by NEEH and other parties, including DBEDT and the Division of Consumer Advocacy, and with the HECO Companies' own June 28, 2013 IRP reports. NEEH stated that it continues to believe, based on the information available to it and all its analyses to date, that an Oahu-Maui Island cable system is in the public interest.

However, in an apparent dilution of its prior strong support for the development of the inter-island cable, NEEH also stated that it is open to new information and analyses to enable fact-based conclusions regarding the public interest of the inter-island cable system under consideration in Docket No. 2013-0169.[7]

While it is not clear, it looks like NextEra either has no plan for developing an inter-island cable, or, has diminished interest in developing the inter-island cable in light of its potential to own the State's electric distribution utilities. Neither result is consistent with the State's policy objectives.

Q. **Is the Proposed Transaction consistent with, or will it advance, the third energy policy directive—effectively balancing technical, economic, environmental, and cultural considerations?**

A. Much more detail is needed on NextEra's forward-looking plans before DBEDT can conclude that the Proposed Transaction is consistent with this policy directive. NextEra certainly appears to have the financial capability and experience in deploying smart grid technologies and other technological solutions needed to reliably integrate and advance the State's island grids. However, DBEDT is not assured that NextEra will be able to effectively balance technical, economic, environmental, and cultural considerations. Among the concerns in this regard are that NextEra's affiliate, FPL, has not proven to support the type of clean energy portfolio that would be imperative in this State. As also noted elsewhere in my testimony and in Mr. Rábago's testimony, DBEDT is concerned

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[7] NEEH's comments are available at the following link: http://dms.puc.hawaii.gov/dms/OpenDocServlet?RT=&document_id=91+3+ICM4+LSDB15+PC_DocketReport59+26+A1001001A14J07B03406J2437218+A14J07B43256B017961+14+1960

that NextEra's leadership may be unable to fully embrace the Hawaii-specific cultural considerations.

Q. Is the Proposed Transaction consistent with, or will it advance, the fourth energy policy directive—leveraging the State's position as an innovation test bed?

A. Due to the lack of any specific post-closing plans, DBEDT cannot conclude that the Proposed Transaction is consistent with this State energy policy directive. *See, e.g.*, Applicants Response to CA-IR-148 (stating in pertinent part that "While the Hawaiian Electric Companies have not yet engaged with NextEra Energy to explore specific pilot programs or testing/demonstration projects that would be initiated after the merger closes, the Companies will continue to assess innovative programs and projects that can help modernize the grid, integrate distributed energy and renewable resources, and implement advanced technologies and functionalities."). I appreciate that the Applicants assert that the Hawaiian Electric Companies will continue to explore opportunities to collaborate with entities that facilitate innovation. Applicants Response to CA-IR-148. However, this does not demonstrate how the Proposed Transaction will yield more benefits to the State and its ratepayers beyond the *status quo*. Again, the public interest standard requires much more.

Q. Is the Proposed Transaction consistent with or advance the fifth energy policy directive—creating an efficient marketplace that benefits producers and consumers?

A. I am concerned that the Proposed Transaction may not be consistent with the fifth energy policy directive—creating an efficient marketplace that benefits producers and consumers. First, NextEra has conducted no evaluation of risks and opportunities for its unregulated renewable independent power producer to provide renewable energy under power purchase agreements with the HECO Companies. Applicants Response to HIEC-IR-9. Second, NextEra views its purported enhanced credit position and access to capital as being a key benefit of the Proposed Transaction. NextEra believes that this enhanced financial position will permit the HECO Companies to pursue their plans at a faster pace and on a more cost-effective basis. While these may be meritorious claims, these claims demonstrate that NextEra intends to support the HEI-centric approach to addressing challenges as that approach was set forth in the PSIPs and DGIP filings, without due consideration of the other options and the State's clear preference for expanding customer choice. In order to provide customers choice, accurate unbundled prices that reflect true costs of service are necessary. In that way when a customer manages their energy to lower their bill they lower energy and grid costs. Accurate price signals also allow the market to innovate, providing options for customers in how they procure or self-supply a particular energy service. Accurate prices protect customers who, for whatever reason, do not adopt DER as any savings realized by DER customers also lower overall energy system costs. Providing numerous options for consumers, and then allowing individuals to choose which of those options works best for their own circumstances, would be an approach more aligned with the State's directives.

Q. Please summarize your conclusions with respect to Issue 1.g.

A. DBEDT viewed the Proposed Transaction as a potential means for infusing new ideas and plans into the discussion of how to advance the State's clean energy goals. Unfortunately, the Applicants failed to provide any detail explaining how the Proposed Transaction will further the State's clean energy objectives. Moreover, the experiences in

FPL's certificated service territory are troubling. For the reasons stated above, I cannot conclude that the Proposed Transaction will enhance the State's clean energy goals. In fact, the Proposed Transaction may be detrimental to achievement of those goals.

Issue 1.h. Whether the transfer, if approved, would potentially diminish competition in Hawaii's various energy markets and, if so, what regulatory safeguards are required to mitigate such adverse impacts.

Q. Explain what commitments NextEra proposes to protect competition in the various energy markets in Hawaii.

A. NextEra does not propose any specific commitments to protect competition in the various energy markets in Hawaii. Rather, NextEra alleges that the Proposed Transaction will not diminish competition. Applicants Exhibit-7 at 43. In support, NextEra states that its subsidiaries who participate in Hawaii's competitive energy and transmission markets will be "subject to the applicable rules and regulations of the Commission and strict affiliate standards of conduct." Applicants Exhibit-7 at 44. NextEra claims that this "framework will ensure no adverse effect on competition . . . ." Applicants Exhibit-7 at 44. At best, NextEra commits (without detailing any accountability measures) to maintain the *status quo*.

NextEra also states that the Proposed Transaction "will simply substitute NextEra as the ultimate parent company of the Hawaiian Electric Companies, in place of Hawaiian Electric Industries." Applicants Exhibit-33 at 51. This statement oversimplifies a fundamental point. DBEDT takes issue with the contention that there is anything simple about substituting a Florida corporation for a Hawaii corporation when it comes to controlling the electric distribution system of 95% of Hawaii's residents. The purpose of this proceeding is to determine whether a *change of control* is in the public interest. In fact, a key benefit the Applicants tout is access to NextEra's managerial resources. *See, e.g.*, Applicants Exhibit 7 at 15:2-4. Clearly, NextEra intends to play a role in the management and operation of the HECO Companies.

Finally, NextEra's statements on affiliate compliance do not address the DER energy market that is unlocked by the price structures that are available to ratepayers. Rate design has a direct impact on competition in the DER energy market, as ratepayers now have choices on how they procure energy services. Accurate pricing through rate design is critical to ensure efficient competition and to mitigate any potential cost shifts among customer groups and classes. Accurate pricing also allows for competition while providing safeguards for all customers by ensuring just and reasonable rates.

Q. What is the State of Hawaii's interests regarding competition in its energy markets?

A. The State's interests in competition stem from its guiding principles to develop diversified energy portfolios, create energy innovation, and provide customers with more energy alternatives and solutions by which to achieve Hawaii's energy objectives. More specifically, the State has an interest in ensuring that its public utilities provide a pricing platform by which technology providers have an opportunity to market a greater diversity of energy solutions to Hawaii customers. This interest is exemplified by the integration of DERs into Hawaii's grid. Approximately 12% of Hawaii customers have rooftop solar generation devices, which is compared to a national average of only 0.5%.[8] Hawaii State energy policy supports customer choice which includes the adoption and incorporation of

[8] U.S. Energy Information Administration, Hawaii's electric system is changing with rooftop solar growth and new utility ownership (January 27, 2015), available here: http://www.eia.gov/todayinenergy/detail.cfm?id=19731.

DERs, especially as these resources can help achieve the State's policy goal of meeting a 100% RPS by 2045.

Q. Do you believe that NextEra's takeover of HEI will promote competition in Hawaii's energy markets?

A. No. NextEra has not provided any commitments to promote competition in Hawaii. Instead, it states that the Proposed Transaction should have no impact on competition as the Proposed Transaction "will simply substitute NextEra" for HEI. Applicants Exhibit 33 at 51. As indicated above, this substitution is not as simple as NextEra would have the Commission believe.

In any event, NextEra's support for the PSIP and DGIP plans of HEI would also continue the same level of competition as that promoted by HEI. Applicants Response to AES-IR-10(c). Without offering any plans different from those provided by HEI, NextEra's takeover could potentially be viewed as continuing the *status quo* on the level of competition in the energy markets in Hawaii.

Q. Stated conversely, do you believe NextEra's takeover of HEI would potentially diminish competition?

A. Possibly. Given the lack of clear plans, we simply do not have enough information to base conclusions on the extent to which NextEra plans to invest in utility-scale renewables, allow higher DG penetration or provide unbundled accurate prices signals in order to allow the market to innovate providing new clean energy solutions. If the experience in FPL's Florida service territory is any indication, the Commission should be concerned about the Proposed Transaction's negative impact on competition. However, if NextEra's strategic approach to Hawaii mirrors its approach in its non-regulated jurisdictions, this concern may be unfounded. We simply do not have enough information at this time to conclude that the proposal will not negatively impact competition.

Q. In light of the State's interests, what is your position on the public interest?

A. NextEra's proposal to continue the *status quo* regarding competition renders its application counter to the public interest. As was explained thoroughly in DBEDT's comments in the DGIP and PSIP proceedings, HEI's plans regarding the future role of DERs may artificially and unfairly restrict the potential of these resources. *See* DBEDT's October 6, 2014 Comments in Docket No. 2014-0192. For instance, HEI's intention to dramatically increase the monthly fixed costs attributable to owners of DERs may create rate shock, create a disincentive for customers to develop DERs, and thereby distort a potentially viable competitor in Hawaii's energy market. *Id.* at 36-40. NextEra's adoption of HEI's plans that would reduce the level of competition in Hawaii is against the public interest.

Q: What are your concluding comments?

A: NextEra's failure to provide any commitments to promote competition or develop any plans different from those provided by HEI will continue to limit customer choice, impede the innovation of new clean energy solutions for customers, and potentially, create a situation in which utility scale and distributed energy resources may be prevented from fairly competing in Hawaii's energy landscape. For this reason, the Proposed Transaction proposal regarding competition is against the public interest.

<u>Issue 2. Whether the Applicants are fit, willing, and able to properly provide safe, adequate, reliable electric service at the lowest reasonable cost in both the short and the long term.</u>

Q. Please comment on Issue 2.

A. Mr. Rábago's Answering and Direct Testimony addresses aspects of Issue 2. To complement his discussion, I identify DBEDT's specific concerns with the Proposed Transaction's potential impact on the HECO Companies' management, which is Issue 2.c. I addressed this issue, to some degree, in my previous discussion of Issue 1.d. That discussion focused on corporate governance, whereas my concerns with respect to Issue 2.c. focus on specific post-transaction management issues.

<u>Issue 2.c. Whether the Proposed Transaction, if approved, will improve the HECO Companies' management and performance.</u>

Q. What claims do the Applicants make with respect to post-transaction management issues?

A. NextEra claims that it "commits that the Hawaiian Electric Companies will be locally managed from their existing operating locations." Applicants Exhibit-7 at 57:6-8. NextEra also claims that the "Hawaiian Electric Companies will continue to be headquartered in Honolulu…." Applicants Exhibit-7 at 23:6-7 & 31:18-21. Further, the Applicants claim that the HECO Companies' president and management teams will be based in Hawaii. Applicants Exhibit-7 at 31:21-22.

Q. Do you have any concerns about these claims?

A. Yes. My principal concern is that the Applicants confirmed in discovery that there is no time period associated with these purported commitments. Applicants Response to

DBEDT-IR-46. The lack of a time commitment is particularly troubling given that, absent the Proposed Transaction, the HECO Companies had no plans to: (1) move the headquarters out of Honolulu (Applicants Response to DBEDT-IR-47); or (2) transfer the HECO Companies' president and management team outside of Hawaii (Applicants Response to DBEDT-IR-48). Thus, the day after the Proposed Transaction is consummated, NextEra could move the HECO Companies' headquarters to Florida and transfer the president and management team out of Hawaii without violating any proposed "commitment."

Q. If the Applicants agreed to time commitments, would the Proposed Transaction be in the public interest?

A. No. Agreeing to time commitments essentially restores the *status quo*. In any event, the Applicants have not submitted testimony agreeing to time commitments. Plus, the Applicants admit that the proposal to maintain operational headquarters is not a benefit. Applicants Response to DBEDT-IR-37. Finally, as I note above, NextEra clearly intends to influence the operation of the HECO Companies. Otherwise, it would not cite the "benefit" of it managerial experience.

Q. What is your conclusion about the Proposed Transaction's impact on the HECO Companies' management?

A. Absent this Proposed Transaction, there is no cause for concern about the potential relocation of the HEI Companies' headquarters, president, or management team. Thus, this aspect of the Proposed Transaction—particularly the lack of any meaningful mechanism for ensuring that these commitments are honored into the future—presents the potential for harm that the State simply would not face in a no-transaction future.

Therefore, as the proposal stands currently, I cannot conclude that it will improve the HECO Companies' management. In contrast, the Proposed Transaction may degrade the HECO Companies' management by relocating it outside of Hawaii.

Issue 3. Whether the Proposed Transaction, if approved, would diminish, in any way, the Commission's current regulatory authority over the HECO Companies, particularly in light of the fact that the ultimate corporate control of the HECO Companies will reside outside of the State.

Q. What do the Applicants propose in regard to the Commission's jurisdiction over HEI?

A. NextEra contends that the Commission's jurisdiction over HEI "will not be diminished" as a result of the Proposed Transaction. Application at 37. NextEra further contends that HEI (and Hawaiian Electric Holdings, LLC) "will continue to abide by and comply with all Commission decisions, orders, and rules application" to HEI. Application at 37. In addition, NextEra proposes certain modifications to the 1982 agreement between the Commission and HEI, which provides conditions for the Proposed Transaction and corporate restructuring activities of HEI. Application at 43; *id.*, Exhibit 8.

Q. What is your position on NextEra's proposed modifications to the 1982 agreement?

A. DBEDT's focus has been on the Proposed Transaction's impact on the State's clean energy policies. Thus, DBEDT has not developed a position on NextEra's proposed modifications to the 1982 agreement at this time. However, I note that NextEra claims its proposed changes to the 1982 agreement are necessary to expand the scope of the Commission's review to permit the Commission to seek and obtain information from NextEra as it pertains to the Commission's responsibilities in overseeing HEI. Applicants Response to CA-IR-113. As it is pivotal that the Commission has access to all NextEra records and information pertaining to its ownership and management of HEI, the Commission must ensure its statutory responsibilities are not infringed in any way by NextEra's proposed changes to the 1982 agreement.

Q. What is your opinion on NextEra's commitment regarding the Commission's jurisdiction?

A. At best, NextEra's statements about not diminishing the Commission's jurisdiction over HEI offer no additional benefits. Rather, NextEra simply commits to maintain the *status quo*. The Commission currently is able to exercise the full panoply of its responsibilities over HEI without complication. Conceivably, exercising authority over an out of state entity adds complications related to time, distance, etc. Thus, the Proposed Transaction may degrade the *status quo* in this regard.

Q. Do you have any additional thoughts regarding the Commission's jurisdiction over HEI and NextEra?

A. Yes. NextEra's takeover of HEI, NextEra's control over the business and operating plans of HEI, and NextEra's eventual allocation of costs to HEI for services provided by NextEra's corporate family will likely introduce issues the Commission is unaccustomed with and may raise unforeseen issues related to the Commission's jurisdiction, at least in the first instance. It is of utmost importance that the Commission retain full authority to examine and verify all documents and information regarding HEI and its transactions with NextEra to ensure they are in the public interest and proper in all respects. Therefore, NextEra's commitment to not diminish the Commission's authority over HEI alone may not outweigh the risks to Hawaii's ratepayers of the Commission's inadequate authority over NextEra's actions regarding HEI.

Q. What is your conclusion regarding NextEra's commitments with respect to Commission authority?

A. NextEra has not shown that this aspect of its proposal provides incremental additional ratepayer benefits.

<u>Issue 6. Whether any conditions are necessary to ensure that the Proposed Transaction is not detrimental to the interests of the HECO Companies' ratepayers or the State and to avoid any adverse consequences and, if so, what conditions are necessary.</u>

Q. Before addressing Issue 6, do you have any threshold comments on this issue?

A. Yes, I have two threshold comments. First, given the Applicants' failure to demonstrate that the public interest would be served by approving the Proposed Transaction, the Commission can reject the proposal without further consideration. While the Commission certainly has the authority to impose conditions that the Applicants can either accept (if they want the Proposed Transaction to go through) or (reject if they deem the conditions are burdensome), I caution the Commission against feeling compelled to do so on its own initiative. In cases like this, acquiring entities have every incentive to submit deficient proposals and rely on regulatory commissions to tell them what conditions would satisfy the applicable standard. This strategy allows acquiring entities to obtain approval while avoiding the risk that they may over-commit to providing benefits that may not have been necessary. Regardless of whether that is, in fact, NextEra's strategy here is beside the point. The Applicants, not the Commission or any other interested party, bear the burden of presenting a proposal that passes muster.

The second and related point is that, should the Commission be inclined to restructure the proposal and approve a modified version, it must distinguish between risk-mitigation measures that are necessary to avoid detrimental impacts (i.e., provisions that keep customers and the State whole from the consequences of the Proposed Transaction) and conditions that are necessary to meet the public interest standard (i.e., provisions that result in incremental benefits that would not materialize in the absence of the Proposed Transaction). My discussion of Issue 6 focuses solely on risk-mitigation measures that are necessary, minimal protections to ensure that the Proposed Transaction does not degrade the *status quo*. However, these minimal protections are not, in themselves, sufficient to ensure that the Proposed Transaction meets the public interest standard. In Part IV below I discuss proposed conditions that result in incremental benefits and help ensure that the Proposed Transaction meets the public interest standard.

Q. The Applicants have taken the view that they "do not anticipate any adverse consequences as a result of the proposed merger transaction." Applicants Response to DBEDT-IR-89. Do you believe this view is credible?

A. No, I do not. It is one thing for the Applicants to state that, while the Proposed Transaction gives rise to potential adverse consequences, they have developed proposals to mitigate or eliminate those adverse consequences. However, it is quite another thing to simply deny that adverse consequences may exist at all. As I discuss below, there are at least seven major aspects of the Proposed Transaction that could be detrimental to the interests of the HECO Companies' ratepayers or the State or that could lead to adverse consequences. I believe it is counterproductive to deny the existence of these issues.

Rather, my recommendation is that the Commission focus on mitigating those adverse consequences to the maximum extent possible.

Q. What is the first aspect of the Proposed Transaction that could be detrimental to the interests of the HECO Companies' ratepayers or the State or otherwise result in adverse consequences?

A. The most glaring problem I identified pertains to NextEra's claim that meeting a 70% RPS by 2040 and 100% RPS by 2045 "may prove to be very aggressive." Response to HREA-IR-1 at 2. In passing Act 97, the legislature clearly articulated the State's clean energy policy. Accordingly, achieving a 100% RPS by 2045 is *the* baseline against which the Proposed Transaction should be compared in determining whether the proposal provides significant, quantifiable benefits in the long term. In other words, it is reasonable for the Commission to assume that the State's electric companies, independent of this Proposed Transaction, will meet the 100% RPS by 2045. Consequently, any suggestion by NextEra that it may not be able to meet the 100% RPS by 2045 could serve as a step backward in relation to what the State should expect in a no-transaction future.

Q. What conditions are necessary to ensure that NextEra's suggestions about the potential for not meeting the 100% RPS are not detrimental to the interests of the HECO Companies' ratepayers or the State and to avoid any adverse consequences?

A. While DBEDT sets forth a proposal for ensuring *incremental benefits* regarding the 100% RPS requirement in Part V below, the Commission must require NextEra to commit to meeting the 100% RPS by 2045 as a *minimal condition precedent* to that proposal. Further, the Commission should impose the following specific conditions.

Joint Planning and Modeling Requirement. The Commission should direct the Applicants to engage in joint planning and modeling of the island grid systems with DBEDT to ensure consistency with the State's broader energy policy. DBEDT believes the joint planning and modeling condition is essential to ensuring that the Proposed Transaction is not detrimental to the interests of the State, particularly where the utility is owned by an out-of-state entity. To facilitate the joint planning and modeling condition, DBEDT recommends that the Commission require the Applicants to commit, as a condition of the Proposed Transaction, to share with DBEDT all modeling information necessary to formulate and test concrete resource scenarios and plans for the HECO Companies to ensure consistency of the forward-looking plans with the State's energy policy directives. This sharing requirement should be an ongoing obligation.

In addition, DBEDT recommends that the HECO Companies be required to meet with DBEDT representatives within 30 days of consummation of the Proposed Transaction and every six months thereafter. At that initial post-closing meeting, DBEDT will provide the HECO Companies with scenarios that the HECO Companies should be required to run to determine feasibility for action. DBEDT expects that the initial scenarios may be largely conceptual in nature due to the lack of all information necessary to formulate grid/circuit-specific scenarios. However, DBEDT should be able to provide more specific scenarios in subsequent discussions (including during the semi-annual meetings) as a result of the requirement discussed above for sharing of modeling information. Examples of scenarios and reporting metrics that DBEDT will provide to the HECO Companies include, but are not limited to: (1) end state snap shots on how intermediate term resource plans support the transition to long term objectives (100%

RPS by 2045, decarbonization of transportation sector through electrification of ground transportation options); and (2) load forecast scenarios covering changes in DER, electric vehicles, inter-island cables, etc.

Certification Requirement. The Commission should also require the HECO Companies to provide DBEDT with a concrete action plan for the optimal mix of renewables, technical mitigations, and pricing strategies towards meeting the 100% RPS goal within one year of consummation.[9] It should go without saying that, post-transaction, the HECO Companies must comply with all relevant State statutes. However, given the indication in the testimony that the Applicants do not share the same understanding as DBEDT regarding the importance of transitioning to a 100% RPS by 2045, the Commission should direct the HECO Companies to submit in their report to DBEDT, a certification by an officer of the HECO Company indicating that the HECO Companies' action plan complies with all relevant statutory requirements, including, but not limited to: (1) Act 97, which would require the HECO Companies to meet the RPS of 30% by December 31, 2020, 70% by December 31, 2040, and 100% by December 31, 2045; and (2) Act 38 (2015), which provides, in part, that LNG must be used only as a

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[9] I recognize that the Revised Framework of the integrated resource planning process requires the utilities to engage in a major review every three years and to submit to the Commission a minimum of one evaluation report between integrated resource planning cycles. However, a separate process with DBEDT is needed so that the action plan can be reviewed and regularly updated to reflect the State's energy policies, changes in market and regulatory conditions, and technological innovations. This is because the IRP and actions of the Applicants are a piece of a broader energy policy. Other aspects of that policy include fostering interdependent energy sectors, spurring innovation and stimulating our economic growth. For example, the State is making headway in the ground transportation sector, reducing Hawaii's consumption of petroleum through the incorporation of plug-in electric vehicles, as well as other alternative transportation solutions to address the challenges of modernizing our energy system and building a clean transportation future. The State is also investing in smart infrastructure and exploring next generation technologies, harnessing power from a variety of renewable resources, such as solar, wind, geothermal, hydro, ocean, biomass and biofuels, and at the same time reducing overall energy consumption. The meetings with the HECO Companies and the provision of the yearly update would help ensure that the State's energy facility systems are planned to more closely align with the State's energy objectives.

cost-effective transitional fuel that does not impede the development and use of other cost-effective renewable energy sources.

The certification by the HECO Companies will need to state their specific plans to meet each of the interim RPS targets. DBEDT proposes that the Commission would then make a determination on the certification and its compliance with all statutory and Commission requirements.

Certificate Revocation Requirement. In the event NextEra fails to meet any of the RPS benchmarks in Act 97, it should be subject to an automatic requirement to show cause as to why its certificate to serve as the State's electric distribution provider should not be revoked.

Q. Please identify the second aspect of the Proposed Transaction that could be detrimental to the interests of the HECO Companies' ratepayers or the State or otherwise result in adverse consequences.

A. The second aspect of the Proposed Transaction that could be detrimental to the interests of the HECO Companies' ratepayers or the State or otherwise result in adverse consequences pertains to corporate philosophy. According to the Applicants, NextEra is "the nation's leading clean energy company…." Applicants Exhibit-7 at 5:13. For example, the Applicants claim that "NextEra Energy Resources is the largest producer of renewable energy from wind and sun in North America." Applicants Response to DBEDT-IR-59. I do not doubt *NextEra's* achievements in clean energy. However, I am concerned about its record of integrating distributed renewable energy at the *distribution company* level. Notably, Mr. Rábago discusses experiences in Florida where FPL has taken actions that, if taken in Hawaii, would run contrary to the State's clean energy policies. Thus, the crux of this concern centers on the uncertainty about which NextEra will show up in Hawaii.

Q. What conditions are necessary to ensure an FPL-like approach to renewables integration is not implemented in Hawaii?

A. It is difficult, if not impossible, to impose conditions that ensure NextEra's corporate philosophy is consistent with the State's clean energy goals. Rather, the question of whether NextEra's corporate philosophy is consistent with the State's clean energy goals goes to the threshold issue of whether the Proposed Transaction is in the public interest. However, to the extent the Commission is inclined to conditionally approve the Proposed Transaction, I recommend that the Commission establish protections relating to customer-owned generation and competitive bidding. Specifically, the Commission should require a specified minimum of DERs new capacity additions to be customer-owned to prevent the risk of anti-competitive behavior by the HECO Companies. In addition, to ensure that the HECO Companies and any other NextEra affiliate are unable to distort the goals and policies enshrined in the competitive bidding framework, the Companies should be prohibited from requesting from the Commission waivers of any elements of the competitive bidding requirements through 2020. This prohibition on waivers is supported by the significant number of waiver requests of the competitive bidding requirements requested by HEI, as identified in Applicants Response to PP-IR-7.

Q. Please identify the third aspect of the Proposed Transaction that could be detrimental to the interests of the HECO Companies' ratepayers or the State or otherwise result in adverse consequences.

A. Inherent in the proposed change of control is the fact that ultimate control of Hawaii's distribution utilities will be transferred from Hawaii to Florida. As indicated above, this aspect of the proposal presents unavoidable harm. Thus, whether Hawaii's electric utilities should be controlled by an out-of-state entity is a threshold issue the Commission will need to address as it considers the merits of the proposal. However, in the event the Commission is inclined to restructure the Proposed Transaction to meet the public interest standard, it will need to do two things in this regard. First, it will need to ensure that the incremental benefits of the restructured proposal offset this harm. I discuss a range of options for doing just that in Part V below. Second, and pertinent here, the Commission will need to strengthen the Applicants' proposals regarding local control that I discuss above under Issue 1.d.

Q. What conditions are necessary to ensure the loss of local control is not detrimental to the interests of the HECO Companies' ratepayers or the State and to avoid any adverse consequences?

A. Any order approving the Proposed Transaction should state the Commission's expectation that the HECO Companies' headquarters should be physically located in Hawaii and that the HECO Companies' president and management team should be located in Hawaii. Accordingly, NextEra should be required to show cause as to why its certificate to serve as the State's electric distribution provider should not be revoked prior to: (1) moving the HECO Companies' headquarters out of Hawaii; or (2) transferring the HECO Companies' president and management team out of Hawaii.

In addition, the Commission should require NextEra to agree to vest local management with authority to approve transactions involving expenditures of up to $50 million without further NEE board approval in Florida. Other utilities have agreed to similar provisions in utility-acquisition proceedings in other jurisdictions.[10] Further, the Commission should require NextEra to agree to vest the HECO Companies' president with final authority on hiring/firing decisions for all employees below the HECO Companies' president.

Q. What is the fourth aspect of the Proposed Transaction that could be detrimental to the interests of the HECO Companies' ratepayers or the State or otherwise result in adverse consequences?

A. While DBEDT's interest and participation in this proceeding stems from its statutory charge with respect to matters of energy policy, DBEDT cannot ignore the fact that the Proposed Transaction gives rise to other, non-energy-policy-related concerns that the Commission should address. For example, I understand that some interested parties may have concerns about the lack of ringfencing provisions that would protect the HECO Companies from risks associated with affiliates outside the fence. The fact that DBEDT may not focus on these issues or offer affirmative proposals should not be construed to mean that these issues are not important. Rather, it simply means that they do not directly relate to DBEDT's core interests in the State's energy policy.

Q. What conditions are necessary to ensure that risks associated with NextEra affiliates are not detrimental to the interests of the HECO Companies' ratepayers or the State?

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[10] Maryland Order No. 86990 at 46.

A. The Commission should impose ringfencing provisions. I note that other utility mergers and acquisitions have included ringfencing provisions that, on their face, seem robust and could serve as the basis for ringfencing provisions in Hawaii.[11]

Q. What is the fifth aspect of the Proposed Transaction that could be detrimental to the interests of the HECO Companies' ratepayers or the State or otherwise result in adverse consequences?

A. NextEra commits to forego rate recovery of any acquisition premium, transition costs, and transaction costs. Applicants Exhibit-33 at 20:1-10. Like the other issues I discuss above, it is important to recognize that shielding customers from these costs is not a benefit. Rather, ensuring that customers do not pay any acquisition premium, transition costs, and transaction costs through rates simply avoids a harm that would not exist but for the Proposed Transaction. In any event, my concern is the lack of detail explaining how NextEra will account for these costs and ensure that they are not passed through rates.

Q. What conditions are necessary to ensure that any acquisition premium, transition costs, and transaction costs are not passed through rates to the detriment of the HECO Companies' ratepayers or the State?

A. Again, DBEDT's focus is on matters of energy-policy. Thus, I do not propose a specific protective mechanism regarding these costs. However, any order approving the Proposed Transaction must ensure that such costs do not, in fact, get passed through to customers directly or indirectly.

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11 Maryland Order No. 86990 at A-31 to A-38.

Q. What is the sixth aspect of the Proposed Transaction that could be detrimental to the interests of the HECO Companies' ratepayers or the State or otherwise result in adverse consequences?

A. As indicated above, I am concerned about the potential for workforce reductions. Therefore, I recommend that the Commission revise the workforce commitments proposed by NextEra to extend its condition to have no involuntary workforce reductions for a period of four years after closing of the transaction.[12]

Q. What is the seventh aspect of the Proposed Transaction that could be detrimental to the interests of the HECO Companies' ratepayers or the State or otherwise result in adverse consequences?

A. As discussed above, the HECO Companies must comply with Act 38 that requires LNG to be used only as a transitional fuel. I am concerned that, due to its lack of concrete plans, NextEra may view LNG as more than a transitional fuel. To protect against this harm, the Commission should ensure that NextEra shareholders bear cost responsibility for any long-term investments in LNG facilities that are contrary to the State's view of LNG as a transitional fuel. DBEDT also notes its concern that protections may be needed in the future to ensure that ratepayers are not saddled with costs passed-on from NextEra and HEI through application of the existing Energy Cost Adjustment Clause.

[12] I note that in the recent Exelon-Pepco Holdings, Inc. acquisition, the acquiring entity agreed to make good faith efforts to hire additional employees. Maryland Order No. 86990 at A-26.

V. DBEDT'S RECOMMENDATIONS IN LIGHT OF THE APPLICANTS' FAILURE TO PRESENT A PROPOSAL THAT MEETS THE PUBLIC INTEREST STANDARD

Q. In a previous answer relating to Issue 6, you discussed the importance of distinguishing risk-mitigation measures from conditions that result in incremental benefits. If the Commission is inclined to approve the Proposed Transaction, is it necessary for the Commission to impose conditions to ensure that the Proposed Transaction provides incremental benefits and, therefore, meets the public interest standard?

A. Yes. The Commission's Statement of Issues in this proceeding highlights that the Proposed Transaction must provide "significant quantifiable benefits to the HECO Companies' ratepayers" beyond those proposed by the HECO Companies in recent regulatory filings, and improve service and reliability for customers, improve the HECO Companies' management and performance, and improve the financial soundness of the HECO Companies. My testimony and the testimony of Karl Rábago highlight numerous areas of the Applicants' proposal that show that the purported benefits are illusory or otherwise that the Applicants do not propose any change beyond the *status quo*, i.e., beyond what the HECO Companies could achieve on a standalone basis. Given the deficient nature of the Applicants' proposal, the Commission must impose conditions if it is inclined to improve the Proposed Transaction. As I explain in my discussion of Issue 6, these conditions are in addition to those minimal, protective conditions that are necessary to avoid harm.

Q. What conditions do you recommend the Commission consider to ensure that the Proposed Transaction results in incremental benefits that go beyond the *status quo* or that are independent of benefits that would be achieved in a no-transaction future?

A. To address DBEDT's fundamental concerns with the Proposed Transaction, and to ensure that the Proposed Transaction results in significant quantifiable benefits, DBEDT recommends that the Commission consider adopting the following conditions.

RPS: I have discussed above DBEDT's position that the State's electric utility—either the HECO Companies on a standalone basis or the post-close entity—must take action to achieve a 100% RPS by 2045. Given that achieving a 100% renewable energy future is the policy objective regardless of whether the Proposed Transaction is approved or not, the Commission's focus should be on ensuring incremental benefits above and beyond would occur absent the Proposed Transaction. While the Commission could ensure such incremental benefits in several ways, I propose that the Commission fashion a requirement to improve upon the required Statewide RPS of 30% by 2020, 70% by 2040, and 100% by 2045 as follows:

The Applicants should be required to submit a plan to achieve the legislatively mandated percentages within the required timeframes, not just Statewide, but on the island of Oahu.[13] Such a requirement should not be controversial. NextEra stated that it

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[13] While the HEI Companies reported that 21% of the energy used by customers of the HEI Companies came from renewable resources in 2014, only about 9% of the electricity generated by HECO and contracted from independent power producers was fueled by renewable resources. The National Renewable Energy Laboratory's Renewable Electricity Futures Study have concluded that Oahu's grid can handle 20% wind and solar penetration.

"is willing to commit to file for Commission review its specific plans on how it will strengthen and accelerate the Hawaiian Electric Companies' clean energy transformation…." Applicants Exhibit-7 at 35:9-11. Further, NextEra explained that "[i]t would be for the Commission to decide whether it would want NextEra Energy to submit these plans, as well as what process the Commission would undertake to review these plans and issue any approvals that it may deem required." Applicants Response to DBEDT-IR-50. There is no reason the Commission could not decide that NextEra should submit such plans as part of the inquiry into whether the Proposed Transaction is in the public interest.

Further, the Commission should establish a monetary penalty for failure to comply with each of the interim and end-state targets. For instance, the Commission could establish a penalty on the return on equity that would be disgorged and placed into a Commission-designated fund (not controlled by NextEra or the HECO Companies) to be used for renewable energy development. Another option would be to base the penalty on a specific percentage of net revenue (based on the prior year's revenue). These monetary penalties, which are in addition to the show cause requirement discussed with respect to Issue 6 above, must be large enough to ensure that NextEra would not be incentivized to fail to meet the conditions.

Smart Grid/AMI/TOU: The Commission should require NextEra to complete certain technological upgrades across its system to facilitate full scale implementation of advanced metering infrastructure ("AMI") and TOU rates, including any necessary back office systems to support such implementation, by a date certain. Specifically, DBEDT believes July 1, 2018 is a reasonable timeframe for completion based on NextEra's purported strengths and experience in this area. Accelerating the implementation of AMI will allow DER-equipped customers to respond to TOU rates in a shorter timeframe. Accurate unbundled technology-agnostic prices encourage customers to lower their bills by making economically efficient decisions that lead to lower system costs and serve as the foundation to ensure that customers pay for energy and grid services they receive and are compensated for the services that they provide to the grid. DBEDT believes that the technical requirement to provide accurate price signals and bill customers on them requires AMI and supporting back office systems. In addition, DBEDT believes that to efficiently design and roll-out accurate price signals, a comprehensive rate design pilot which can be applied to the entire population of utility customers needs to be initiated now to test customer acceptance, response and education and outreach strategies. Therefore, the Commission should require definitive and detailed resource plans with set milestones for introduction of TOU rates to the entire population of customers including: (1) a proposal to be submitted to the Commission for AMI deployment and back office systems such that the infrastructure will be in place by a set date (e.g., July 1, 2018); and (2) a Comprehensive Time Variant Rate pilot with a commitment to submit a proposal to the Commission to implement time variant rates to the entire population of customers by a set date (e.g., July 1, 2018).

Rate Benefits: As explained above, the Applicants' proposed rate freeze is inadequate and unlikely to yield real benefits. However, the Commission could revise the rate moratorium proposal submitted by NextEra by requiring a rate credit[14] or

[14] By way of example, I note that, in the Exelon-Pepco Holdings Inc. acquisition, the acquiring entity agreed to provide substantial rate credits. Maryland Order No. 86990 at A-1 (discussing at $100/customer rate credit, in addition to other financial concessions).

establishing a meaningful rate moratorium. The Commission should require a guarantee that the rate moratorium will not inhibit appropriate capital planning (e.g. ability to deploy AMI), which may require shareholder contributions in order to show an incremental benefit. The Commission should require sufficient ratepayer protections if there is an earnings shortfall.

Energy Innovation Funding: The HECO Companies should be required to establish an innovation fund (not administered by NextEra) that would be used to help facilitate energy innovation, develop engineering talent for the State and university system, foster new technologies, and support sustainable business related grid modernization in furtherance of the State's 100% RPS goal. Specifically, the HECO Companies should be required to provide, within six months from the date of the approval, $15 million to establish the innovation fund. The HECO Companies would be subject to an ongoing requirement to provide $5 million in funding on an annual basis until the 100% RPS goal is attained. Such funding would come from NextEra's shareholders and would not be subject to rate recovery.

Energy Efficiency: DBEDT recommends that the Applicants provide $15 million in energy efficiency funding, to be deployed at the Commission's discretion, within 30 days of closing. The Applicants contend that they have not made commitments with respect to energy efficiency "because it is Applicants' understanding that these programs are administered by Hawaii Energy." Applicants Response to DBEDT-IR-132. In other jurisdictions involving proposals to acquire electric distribution utilities, the acquirer made commitments to advance energy efficiency efforts even where energy efficiency programs were administered by a third party.[15] Although the Exelon-Pepco Holdings, Inc. acquisition needed regulatory approvals from four jurisdictions, the acquiring entity agreed to provide $43.2 million in energy efficiency in just one of those jurisdictions. The other jurisdictions would receive comparable value based on the number of customers. Maryland Order No. 86990 at 4. Thus, there is no obvious basis for the Applicants' decision not to provide improvements in the area of energy efficiency.

Workforce Efficiency: The Commission should condition NextEra's acquisition with a requirement that NextEra achieve annual workforce efficiency gains of at least 1% for a period of four years. Savings accrued from the efficiency gains should offset NextEra's revenue requirement during the term of this condition. Workforce efficiency could be achieved by adding activities that increase productivity of new and existing staff.

System Studies: The Commission should require NextEra's shareholders (i.e., not its ratepayers) to pay for comprehensive studies to be undertaken by the National Renewable Energy Lab and the U.S. Department of Energy Grid Modernization Laboratory Consortium to identify options to improve technological innovation and system improvements of the Hawaii electrical grid. As part of this condition, NextEra should be required to implement the recommendations resulting from the comprehensive studies.

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15 In the District of Columbia, energy efficiency programs are overseen by a third-party Sustainable Energy Utility. Nonetheless, the acquiring entity in the Exelon-Pepco Holdings, Inc. transaction proposed energy efficiency benefits. See Joint Applicants Reply Brief in District of Columbia Public Service Commission Formal Case No. 1119 at 40 (May 27, 2015), available at http://dcpsc.org/edocket/docketsheets_pdf_FS.asp?caseno=FC1119&docketno=905&flag=D&show_result=Y.

Interconnection Queue: The Commission should require the HECO Companies to clear the interconnection queue within 60 days of Commission approval of the merger. The Commission should also require that the HECO Companies maintain a cleared interconnection queue, and to report on the status of the queue every six months following merger approval. NextEra's failure to meet this requirement should result in a 50 basis point return on equity penalty until it is able to meet the terms of the requirement. The Commission should also require NextEra to designate an interconnection ombudsman to ensure compliance with interconnection requirements and file reports detailing compliance and any corrective actions.

Circuit Penetration: The Commission should impose a rebuttable presumption to require automatic approval of distributed generation energy systems of 10 kW or lower for circuits that have not specifically been identified by NextEra as circuits where further penetration of distributed generation cannot be accommodated in the near term. I recognize that the separate consolidated DER/DGIP/Rule 14H docket appears to be making progress on the issue of the interconnection queue and circuit penetration. This condition may only be necessary if the DER/DGIP/Rule 14H proceeding does not resolve the circuit penetration issue raised here.

Storage: Within 60 days of approval of the Proposed Transaction, the Commission should require NextEra to submit publicly-available and detailed plans to the Commission for approval explaining how it will increase (toward the achievement of 100% RPS by 2045) interconnection of distributed and utility-scale energy storage systems and its timeframe for meeting such developments.

Non-Exporting Distributed Resources: Within 60 days of approval of the Proposed Transaction, the Commission should require NextEra to submit a filing detailing a proposed process for expediting interconnection review of non-exporting distributed resource systems. I recognize that the separate consolidated DER/DGIP/Rule 14H docket appears to be making progress on the issue of the interconnection of non-exporting (Self-Supply) distributed resources. This condition may only be necessary if not already resolved under the DER/DGIP/Rule 14H proceeding.

Reliability Improvements: NextEra purports to commit to making "improvements in service reliability…." Applicants Exhibit-7 at 19:4-5. However, the improvements would be measured against a baseline year that would not be determined until some point in the future. *Id.* at 19:4-9. According to NextEra, "[t]he baseline can only feasibly be developed after NextEra Energy has sufficient time and access to information and resources to better understand the strengths and any limitations in the Hawaiian Electric Companies' respective electric grids, systems, operations, and plans, and to assure a complete understanding of how the Hawaiian Electric Companies are currently measuring reliability." Applicants Response to DBEDT-IR-34. I question the basis for this claim, particularly given that proposed utility acquisitions in other proceedings contained specific commitments to make measureable improvements to reliability.[16] Rather than shift the risk away from NextEra, the Commission should hold NextEra accountable for its commitment and require NextEra to propose concrete SAIDI and SAIFI improvements as compared to a baseline that is based on a reasonable

[16] Maryland Order No. 86990 at A-13 to A-14. The reliability targets in Maryland would have to be met within certain budget parameters or financial penalties could be assessed. *Id.* at A-15 to A-16.

projection of the HECO Companies' anticipated SAIDI and SAIFI performance in a no-transaction future.

Cybersecurity: Within 30 days of approval of the Proposed Transaction, NextEra should be required to submit a concrete plan for cyber-security improvements, with targeted dates for achieving key milestones.

Q. Do you have any comments on the need for an enforcement mechanism with respect to these conditions?

A. If the Proposed Transaction is approved, practical, legal, or other difficulties make it unlikely that the decision could be reversed in the event NextEra failed to comply with the conditions. Thus, it is critical that mechanisms be established to monitor NextEra's compliance with these conditions. In addition, enforcement mechanisms should be set in advance so that all parties are aware of the consequences of a failure to comply with any condition. DBEDT stands ready and willing to work with the Commission, NextEra, and interested stakeholders to monitor compliance with the conditions and enforce measures designed to ensure accountability. In addition to participation in the monitoring of such conditions, DBEDT would also be prepared to participate in substantive negotiations with all interested parties, including NextEra and HEI, as soon as possible to attempt to achieve a workable settlement to achieve the State's goals. However, the required commitments will be required to be both specific and enforceable.

Q. Please summarize your conclusions about conditions the Commission should impose if it is inclined to restructure and approve the Proposed Transaction.

A. To reiterate, the Applicants have not shown that the Proposed Transaction is in the public interest. Thus, the Commission has authority to reject the proposal without further consideration. While the Commission certainly has authority to restructure the Proposed Transaction and approve a modified version, I caution the Commission from feeling compelled to do so. The Applicants had the burden of proof and were either unable or unwilling to submit a proposal that satisfied that burden.

However, in the event the Commission elects to issue an order conditionally approving the Application, it should ensure that the conditions address the concerns identified in my testimony and the testimony of Mr. Rábago. Such concerns go to minimal, protective measures that are a necessary but not sufficient part of any order approving the proposal. In addition, these conditions include enforceable commitments designed to ensure that the transaction results in incremental benefits consistent with the public interest standard.

Q. Does this conclude your testimony?

A. Yes.

Address: 235 S. Beretania St, Room 502, Honolulu, HI 96813
Phone: 808-587-3812
Email: mark.b.glick808@dbedt.hawaii.gov
Date of Birth: 23 May 1958
Nationality: USA

Curriculum Vitae of Mark B. Glick

Career Summary:

• Professional career features private and public sector roles in a wide area of disciplines including energy, resource and asset management, clean transportation strategies, environmental policy, and economic development.

Specialties: Public management; energy planning, policy & programs; economic transformation through clean energy; business development; banking services; grant management & writing; environmental policy; training & technical assistance.

Professional Experience

10/14/11 to present

***Administrator,* Hawai'i State Energy Office**

Department of Business, Economic Development, and Tourism (DBEDT)

Mark Glick is Administrator of the Hawaii State Energy Office, a post he has held since October of 2011. As Administrator, Glick leads Hawaii's internationally regarded clean energy transformation and innovation efforts. Some highlights of his tenure include exceeding Hawaii's 2015 interim renewable portfolio and energy efficiency portfolio standards, leading the nation for three consecutive years in the per capita value of energy savings performance contracts, and establishing the Hawaii Green Infrastructure Authority and the GEMS low-interest bond/ on-bill energy finance program with an initial issuance of $150 million in bonds.

7/23/10 to 10/14/11

Energy Project Manager and Senior Advisor

Hawai'i State Energy Office, DBEDT

Managed $9.59 million in Recovery Act projects to increase the number of renewable energy and energy efficiency installations in Hawai'i and introduced the GreenSun Hawaii low-interest loan program featuring major Hawai`i financial institutions and credit unions.

8/16/05 to 3/15/10

Director of Economic Development

Office of Hawaiian Affairs (OHA), Honolulu, Hawai'i

Developed and managed business development, financial, grant, and training & technical assistance programs. Primary accomplishments included the innovative restructuring of the $28 million Native Hawaiian Revolving Loan Fund program, overseeing the formation of Pacific Network Television (www.pacificnetwork.tv) and the Hawai'i Procurement Technical Assistance Center and managing the Consumer Micro Loan and the Consumer Based Economic Development (CBED) Grant programs. Glick often served as signatory for the Deputy Administrator in the Deputy's absence.

7/21/03 to 8/16/05

***Director*, Office of Board Services, OHA**

Managed a division of the Office of Hawaiian Affairs ensuring fulfillment of the policies and actions of the Board of Trustees. Established an Action Item Monitoring & Reporting process and Records Management Program. Managed agency facilities in O'ahu, Maui, Moloka'i, Hawai'i and Kaua'i and provided oversight of contracts for capital grants. Responsible for publishing the Native Hawaiian Data Book.

May 1996 to July 2003

President, GANA INC., Austin, TX

Co-founder and manager of a business systems integration and consulting firm dedicated to establishing alternative fuel transportation, including pioneering efforts in the marine environment.

- Secured contracts and grants from the U.S. Department of Energy, the Gas Research Institute, Keyspan Energy Delivery, Pacific Gas & Electric and the New York City Department of Transportation for clean fuel and emissions reductions projects in Boston, San Francisco and New York City.
- Formed a strategic partnership with Keyspan Energy Delivery and the Urban Harbors Institute – University of Massachusetts Boston to develop a comprehensive natural gas ferry initiative in Boston Harbor funded by federal grants, state Chapter 91 mitigation funds and private sources.
- Assisted in passage of California SB-428 creating the San Francisco Bay Water Transit Authority.
- Advised the Federal District of Mexico in developing a price of LNG and CNG for retail fuel vehicle sales.

March 1994 to May 1996

President, Global Environmental Technologies, Inc., Austin, TX

- Managed operations of international firm that assembled fuel stations dispensing natural gas vehicular fuel. Negotiated international letters of credit & project financing for major projects.
- Built and delivered the world's three largest containerized CNG refueling stations under

contract to the country of Bangladesh.

- Served as Acting CEO and crisis manager of the firm's publicly-traded corporation parent.

January 1991 to March 1994

President, 4E Technologies, Inc., Austin, TX and Los Angeles, CA

Co-founded and managed a consulting firm dedicated to cost-effective environmental solutions for air, water and soil. Created the "Texas Commitment" for the Governor of Texas, a successful strategy to maintain operations of a General Motors vehicle assembly plant. Conceived and coordinated the formation of EcoTrans Industries, Inc., an $8 million joint venture with Southern California Gas Company to produce the first vehicle ever certified by EPA to the Inherently Low Emission Vehicle standard.

October 1987 to January 1991

Executive Assistant to the Commissioner, Texas General Land Office, Austin, TX

Senior Advisor to the Texas Land Commissioner, an appointed position to a statewide elected official responsible for managing more than 20 million acres of state-owned lands and waters. Supported and monitored all of the Commissioner's work outputs and represented the Commissioner in his absence at public functions and policy-making forums. Was a key member of the Commissioner's senior management team responsible for managing the agency's 600 employees and $20 million operating budget. Helped establish the agency's energy resource initiatives, including creation of the State of Texas' acclaimed alternative fuels program. Accomplishments included:

- Assisted in writing and gaining passage of amendments to the Texas Clean Air Act in 1989.
- Assisted in writing and gaining passage of the federal Clean Air Act Amendments of 1990.
- Assisting agency efforts secure designation of the Wider Caribbean as a special area under MARPOL Annex V and establishment of Texas' comprehensive oil spill response program.
- Raising $1.1 million from a consortium of 10 electric and gas utilities to build GMC Sierra pickup trucks operating on CNG in the first commercial natural gas vehicle rollout by a major auto manufacturer.

August 1986 to October 1987

Special Assistant for Economic Development & Systems Planning, Office of the Chancellor, Lamar University System; Beaumont, TX

Assisted the Chancellor with university system reorganization and special projects. Authored two studies for the University's John E. Gray Institute on economic development opportunities for the software and plastics industries in S.E. Texas.

June 1977 to August 1984

Operations, Port Arthur Refinery, Gulf Oil Corporation; Port Arthur, TX

Served as Assistant Operator and Operator of petrochemical units in Gulf Oil's largest refinery, the last four years while attending college full-time.

Education

Master of Science, Public Management and Policy; Carnegie-Mellon University, May 1986

Bachelor of Arts, Mathematics; Lamar University, August 1983

Supplementary Education

Post-graduate studies in Political Economy, concentration in regional and economic development; University of Texas at Dallas, 1987-1992

Professional & Community Service Affiliations

- Vice Chair, Board of Directors, Hawaii Green Infrastructure Authority (2014-present)
- Board of Directors, Washington Place Foundation (2011–present)

- Vice President, Board of Directors, Friends of Honouliuli (2008-present)
- Member, Hawai'i Energy Policy Forum (2005-present)
- Strategic Advisory Board Member, Energy Excelerator (2012-present)
- Chairman of the Executive Committee, Sierra Club Hawai'i Chapter (2008-2011)
- Native Hawaiian Revolving Loan Fund Board (member, 2007-2010)
- Hawai'i Community Based Economic Development Advisory Council (member, 2005-2010)
- Member, Native Hawaiian Revolving Loan Fund Board (Nov. 2007-July 2010)
- Board of Directors, Secretary, KAHEA: The Hawaiian-Environmental Alliance (2002-2010)
- Senior Associate, Urban Harbors Institute, University of Massachusetts Boston (1999-2012)
- Committee Member, US Coast Guard Alternative Fuels Project Committee (1996-1997)
- Member, Natural Gas Advisory Committee, Texas Air Control Board (1993-1994)
- Member, Federal Fleet Conversion Task Force Working Group on Federal, State and Local Programs and Regulations (1993)
- Member, Natural Gas/Electric Utility Dialogue Group (Coordinated by CONSAD Research Corp. and the US Environmental Protection Agency – 1989-1991)
- Member, Gas Research Institute NGV Technology Project Advisory Group (1989-1991)
- Founding Member, Clean Air Texas (established in 1988)
- Member, Natural Gas Policy Group (Coordinated by the World Resources Institute – 1988)

Publications, Special Reports & Certifications

FY 2002 CMAQ Proposal: Introducing Compressed Natural Gas Passenger Ferries in Boston Harbor. Submitted to the Boston Metropolitan Planning Organization by GANA Inc. & the Urban Harbors Institute – University of Massachusetts Boston. (April 2001)

Natural Gas as a Transportation Fuel: Energy and Environmental Benefits in Urban Ferry Service, Alex Farrell, Carnegie-Mellon University; Mark Glick, GANA, Inc.; Presented at the Transportation Research Board 2000 Annual Meeting and published in Transportation Research Records (2000)

The Clean Urban Transportation Initiative, GANA Inc. & the Urban Harbors Institute – University of Massachusetts Boston. Gas Research Institute publication (1998)

Certification: Inherently Low-Emission Vehicle (ILEV). Issued by: The United States Environmental Protection Agency, Office of Mobile Sources. #PAS-LDT-94-01. [note: This was the 1st ILEV certificate ever issued for the ILEV standard](October 19, 1993)

Presidential Executive Order 12844 -- Prepared by: 4E Technologies, Inc. and the Texas General Land Office. (Signed by President Clinton on April 21, 1993)

Natural Gas Vehicles for Mexico City: Emissions Reductions and Economic Benefits, 4E Technologies Inc. and Tren Fuels, Inc., Report to the Federal District of Mexico (June 1992)

Estimating Emissions Reductions from a Comprehensive Dallas-Ft. Worth NGV Program, 4E Technologies, Inc. Report to the Dallas City Council (July 1992)

"Texas Commitment to Natural Gas Vehicles and the General Motors-Arlington Plant." Action Plan to Governor Ann Richards, Prepared by: Mark B. Glick, B. Thomas Henderson, and Blanton Moore (Executive Summary: January 6, 1992; Action Plan: January 14, 1992)

Putting Together the Pieces, Recapitalization of the Texas Economy, B. Thomas Henderson, Craig Donegan, Lee Solsbery, Mark Glick, et al; a Texas General Land Office publication (1989)

Software Development in Southeast Texas, a John E. Gray Institute publication (1987)

Establishing the Plastics Industry in Southeast Texas, a John E. Gray Institute publication (1987).

The Beaumont Plan, an Organizational Guide, a comprehensive management plan for the City of Beaumont after the ESM crisis, a Carnegie-Mellon University graduate report (1986)

Testimony, Advocacy & Rulemaking

Hawai'i Legislature:

Since 2003, Glick has testified before the Hawai`i Legislature on several hundred legislative proposals relating to energy, economic development and the environment as Administrator of the Hawai`i State Energy Office, an officer of the Office of Hawaiian Affairs, board member of KAHEA: The Environmental Alliance and the Sierra Club Hawai`i Chapter, and member of the Hawai`i Energy Policy Forum. For two consecutive years, Glick also helped organize a statewide coalition advocating priority environmental measures. http://www.hi.sierraclub.org/press/releases04-05/2005/2.1.05BriefingBook.pdf

Other Advocacy:

Presentation: "Boston Harbor CNG Passenger Ferry Initiative." Massachusetts Clean Cities Executive Committee Meeting, December 18, 2001 (JFK Federal Bldg, Boston)

"Workshop on Alternative Fuels for Ferries/Ships." Panel Discussion. Hosted by the Maritime Administration, November 1-2, 2000 (Naval Air Station Officer's Club - Alameda, California)

"Next Generation Ferry/Coastal Ship Cooperative Research Meeting." Panel Discussion. Hosted by the Maritime Administration. August 25, 1998 (Merchant Marine Academy, Great Neck, New York)

"Development of Rules for Natural Gas on Ships," US Coast Guard Alternative Fuels Working Group Meeting, March 12-13, 1997 (Washington DC)

USA Representative, "The Use of CNG, LNG and LPG as Fuels for Internal Combustion Engines." Organized by the United Nations Economic Commission for Europe, Committee on Energy, Working Party on Gas. Helped prepare & present "Report of the Symposium" at the invitation of symposium Vice-Chairman E.I. Williamson (United Kingdom) September 23-27, 1991 (Kiev, Ukraine)

California Foundation on the Environment & the Economy, "Roundtable Gas Conference." October 18-19, 1990 (Carmel, California)

BEFORE THE
HAWAII PUBLIC UTILITIES COMMISSION

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

VERIFICATION OF MARK B. GLICK

County of Honolulu)
State of Hawai`i)

I, Mark B. Glick, verify that the foregoing Answering and Direct Testimony and supporting exhibits were prepared or compiled by me or under my supervision, and that the information contained therein is true and correct to the best of my knowledge, information, and belief.

Mark B. Glick

Verified on this 17th day of July 2015.

BEFORE THE HAWAII PUBLIC UTILITIES COMMISSION

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

ANSWERING AND DIRECT TESTIMONY OF KARL R. RÁBAGO

ON BEHALF OF THE

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

DBEDT Exhibit-3 through DBEDT Exhibit-5

July 20, 2015

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**SUMMARY OF THE
ANSWERING AND DIRECT TESTIMONY OF KARL R. RÁBAGO
ON BEHALF OF THE
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM**

Karl R. Rábago is an attorney providing consulting services in the areas, among others, of utility regulation, technology development, and market design. Mr. Rábago's services are guided by his 25 years of experience working on these issues, including for public utility commissions and energy departments at both the state and national level. His Answering and Direct Testimony complements the testimony filed by Mark B. Glick on behalf of the Department of Business, Economic Development, and Tourism ("DBEDT"). Mark Glick's Answering and Direct Testimony discusses the specific impacts the proposed change of control will have on Hawaii's energy policy goals and directives based on the State's unique energy policies, landscape and culture. Mr. Rábago's Answering and Direct Testimony also provides analysis of the proposed transaction's impacts on Hawaii's energy policy goals, but from his knowledge and experience of NextEra Energy, Inc. ("NextEra") and its affiliates' operations and undertakings in other regions of the country.

Mr. Rábago explains that under Hawaii law, the Applicants bear the ultimate burden of demonstrating that the proposed transaction is reasonable and in the public interest and that it will result in utilities that are fit, willing, and able to perform requisite services in Hawaii. When assessing these standards, Mr. Rábago explains that resolution of the public interest inquiry should hinge on whether NextEra will provide significant, quantifiable benefits in achieving Hawaii's energy transformation goals. These benefits must be incremental to any benefits that would be realized in a no-transaction future.

In applying the applicable standard to the merits of the Applicants' proposal, Mr. Rábago finds that the Applicants failed to provide sufficient evidence of plans or commitments that would demonstrate the incremental benefits to the residents of Hawaii resulting from the proposed transaction. Instead, he determines that due to his experiences and review of other evidence of the actions and policies undertaken by NextEra through its affiliates, including the Florida Power and Light Company, the proposed transaction is antithetical to the State's policy mandates and presents identifiable risks of harm for which the applicants provide no mitigation commitments. These harms include, among others, that: (1) the business strategy of NextEra and its affiliates runs counter to the State's clean energy goals; (2) NextEra lacks sufficient experiences operating as a service provider in highly competitive electricity generation, services, and distributed energy resources markets; and (3) NextEra has not shown it will be able to improve reliability of service in Hawaii. Mr. Rábago also explains that adequate protections are needed to safeguard the State and Hawaii ratepayers from adverse consequences related to NextEra's ownership of the Hawaiian Electric Companies.

Mr. Rábago concludes that that the Hawaii Public Utilities Commission can either issue an order rejecting the Application or elect to undertake the Applicants' burden and restructure the proposal to ensure that it is consistent with the public interest. Along with Mr. Glick, Mr. Rábago supports certain conditions that DBEDT recommends the Commission consider if it is inclined to issue an order conditionally approving the Application.

BEFORE THE HAWAII PUBLIC UTILITIES COMMISSION

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

ANSWERING AND DIRECT TESTIMONY OF KARL R. RÁBAGO
ON BEHALF OF THE
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

I. INTRODUCTION

Q. Please state your name and business address for the record.

A. My name is Karl R. Rábago. My business address is 62 Prospect Street, White Plains, New York 10606.

Q. By whom are you employed and in what capacity?

A. I am the principal and sole employee of Rábago Energy Limited Liability Company, a consulting company registered in the State of New York. I am also employed as the Executive Director of the Pace Energy and Climate Center and Professor for a Designated Service at the Pace University School of Law, in White Plains, New York. My work in this matter is limited to my role as principal of Rábago Energy LLC, and does not relate to my employment at Pace.

Q. On whose behalf are you testifying in this proceeding?

A. I am testifying on behalf of the State of Hawaii Department of Business, Economic Development, and Tourism ("DBEDT").

Q. Please summarize your work experience and education.

A. Of note, my previous employment experience includes serving as Commissioner with the Public Utility Commission of Texas, Deputy Assistant Secretary with the U.S. Department of Energy, Vice President with Austin Energy, and Director of Regulatory Affairs with AES Corporation. I am also the principal of Rábago Energy LLC, a consulting practice that has operated in Texas, Colorado, and New York. I have some 25 years of experience in electric utility regulation, technology development, and markets. I am an attorney with degrees from Texas A&M University and the University of Texas School of Law, and post-doctorate degrees in military and environmental law from the U.S. Army Judge Advocate General's School and Pace School of Law, respectively. A detailed summary of my education and work experience is set forth in my *curriculum vitae*, attached as DBEDT Exhibit-4.

Q. Have you testified previously before the Hawaii Public Utilities Commission (the "Commission")?

A. While I have not previously testified before this Commission, I have testified before a number of other state utility commissions. In the past three years, for example, I submitted testimony, comments, or presentations in proceedings in New York, Virginia, Georgia, Minnesota, Michigan, Missouri, Louisiana, North Carolina, Kentucky, Arizona, Florida, Wisconsin, and the District of Columbia. A listing of my recent previous testimony is attached as DBEDT Exhibit-5.

Q. What is the purpose of your Answering and Direct Testimony in this proceeding?

A. My testimony addresses the Application of the Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), and Maui Electric Company, Limited ("MECO") (HECO, HELCO and MECO are collectively referred to as the "HECO Companies" or "HEI"), and NextEra Energy, Inc. ("NextEra") (HEI and NextEra are jointly referred to as the "Applicants") for Approval of the Proposed Change of Control and Related Matters ("Application" or "Proposed Transaction").

Q. What materials did you review in preparing your Answering and Direct Testimony?

A. I reviewed the Application for Proposed Change of Control, filed as Docket No. 2015-0022, the Applicants' April 13, 2015 pre-filed testimony, Commission Order Nos. 32695[1] and 32739,[2] some of the pleadings and responses regarding intervention, and certain of the Applicants' responses to information requests from the parties.

Q. In Order No. 32739, the Commission established six issues that the parties were to address in their pre-filed testimony. Please identify the issues you address in this Answering and Direct Testimony.

A. My Answering and Direct Testimony addresses Issues 1, 1.b, 1.d, 1.e, 1.g, 1.h, 2, 2.b, 2.d, 3, 4, 5 and 6. In accordance with Order No. 32739, the Answering and Direct Testimony of Mark B. Glick on behalf of DBEDT, includes a table indicating where in his and my separate Answering and Direct Testimony each of the specified issues from the Commission's Statement of Issues is addressed.

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[1] *In the Matter of the Application of Hawaiian Elec. Co. , Inc., Hawaii Elec. Light Co., Inc., Maui Elec. Co., Ltd., & NextEra Energy, Inc.*, Docket No. 2015-0022, Order No. 32695 (Mar. 2, 2015) ("Order No. 32695").

[2] *In the Matter of the Application of Hawaiian Elec. Co. , Inc., Hawaii Elec. Light Co., Inc., Maui Elec. Co., Ltd., & NextEra Energy, Inc.*, Docket No. 2015-0022, Order No. 32739 (Apr. 1, 2015) ("Order No. 32739").

Q. Were your Answering and Direct Testimony and other exhibits prepared by you or under your direct supervision and control?

A. Yes.

II. STANDARD OF REVIEW, UTILITY CONTEXT, BURDEN OF PROOF AND ASSOCIATED IMPLICATIONS

A. Standard of Review

Q. What is your understanding of the statutory background for the appropriate standard for review to assess the Proposed Transaction?

A. While I am not offering a legal opinion, I am routinely called upon in my capacity as an expert witness to interpret statutes and regulatory orders in order to apply the law to the facts of a particular case. With that caveat, my understanding is that the Commission has specific authority over the Proposed Transaction pursuant to three statutory provisions. First, Section 269-7(a), HRS, vests the Commission with authority:

> to examine into the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charier, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

Second, Section 269-17.5(c), HRS, provides, *inter alia*, that, unless a transaction is exempt (and the propose change of control is not exempt), then:

> No more than twenty-five per cent of the issued and outstanding voting stock of a corporation organized under the laws of the State and who owns, controls, operates, or manages any plant or equipment, or any part

> thereof, as a public utility within the definition set forth in section 269-1 shall be held, whether directly or indirectly, by any single foreign corporation or any single nonresident alien, or held by any person, unless prior written approval is obtained from the public utilities commission.

Third, Section 269-19(a), HRS, provides, in pertinent part, that:

> [N]o public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

Q. How has the Commission interpreted this authority?

A. The Commission has stated that a proposed change of control must be "reasonable and consistent with the public interest."[3] The Commission has also explained that it must be able to find that, under new ownership, the utility will be fit, willing, and able to perform the service it is currently performing in the State.[4] Further, the Commission has previously held that State law vests the Commission with "broad powers to review" proposed transfers of control.[5]

Q. Based on this background, what is your opinion of the appropriate standard of review?

A. The standard of review requires satisfaction of two distinct parts of a test. The evidence must support a conclusion that the new combined entity will be fit, willing, and able to

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3 *In re The Gas Company, LLC*, Docket No. 05-0242, Decision and Order No. 22449 at 21 (May 3, 2006).

4 *Id.* at 22.

5 *Id.* at 20.

perform the service it is currently performing. In addition, the evidence must support a conclusion that the transfer is reasonable and in the public interest. The Commission's Order No. 32739 recognizes this standard of review in its identification of the six categories of issues to be addressed in this docket. Specifically, the first two issues are whether the Proposed Transaction is reasonable and in the public interest, and whether the HECO Companies will be fit, willing, and able to perform the service they currently perform in Hawaii under the ownership of NextEra.

However, it is also important to recognize the role that Hawaii's energy transformation plays with respect to the public interest inquiry. In exercising the "broad powers" I mentioned above, I recommend that the Commission explicitly interpret the public interest standard in this proceeding as accounting for the transformation period the State is engaged in, as well as the State's policy goals and objectives. In fact, I believe it would be difficult, if not impossible, to reach a reasoned decision that does not explicitly consider the Application in the context of the State's clean energy transformation.

Q. Has the Commission provided guidance to the participants regarding how this policy context impacts the evaluation of the Applicants' Proposed Transaction?

A. Yes, as the Commission notes in Order No. 32695, the newly combined entity must address, "a series of complex and challenging issues that will determine how they will develop and implement a sustainable and progressive business model that results in quantifiable benefits for ratepayers and the State's citizens and economy."[6] At issue, therefore, is not simply an assessment of whether NextEra will provide benefits above and beyond what the HECO Companies could achieve on a standalone basis. Rather, the

6 Order No. 32695, at p. 7.

public interest inquiry should hinge on whether NextEra demonstrates incremental benefits as compared to a no-transaction future where the State's electric distribution utilities are fully compliant with the State's clean energy policies.

Q. Have the Applicants met the applicable standard of review?

A. At this time, I am unable to conclude that the Applicants have met their burden of production and proof in demonstrating that they are fit, willing, and able to perform the services that the HECO Companies are required to provide, that the Proposed Transaction is reasonable and in the public interest, or that the Proposed Transaction will result in significant, quantifiable benefits. Rather, the Applicants have simply offered unsupported statements about their intentions to accelerate and strengthen Hawaii's clean energy transformation, lower rates, and improve service levels. As I discuss herein, DBEDT pressed the Applicants for details on the basis for these claims and the Applicants have been unable to provide meaningful responses.

B. <u>Utility Industry Context</u>

Q. Do you have any general comments on the context within which you reviewed the Application?

A. Yes. Given that this Application has been filed during a pivotal point in Hawaii's clean energy transformation, I believe an understanding of the broader trends and issues of utility transformation elsewhere in the United States provides useful context and background when considering whether the Proposed Transaction is in the public interest.

Q. Please describe the broader trends and issues you mentioned in your previous answer.

A. In the broadest terms, the electric utility is facing a revolution in scale and a fundamental transformation in the way that customers expect to interact with their electric service providers. This transformation builds on a shift toward cleaner, more renewable, and more diverse sources for supply and service than has already taken hold in the industry. The revolution in scale is toward smaller, more right-sized and diverse distributed energy resources. These resources may be managed by the utility, third party competitors, or customers themselves. Commentators have coined the term "prosumer" to describe the customer that sometimes consumes, sometimes produces, and sometimes does both. On the table are concepts like an independent distribution system operator role for distribution companies, fully unbundling of rates and services, and open access to distribution grids by competitors and customers acting as prosumers. This transformation will be enabled by more intelligent and information-rich systems and will be driven by competition and choice. Distributed energy resources are emerging in several distinct and interrelated markets, including, but not limited to: (1) customer-sited and shared generation; (2) distributed generation; (3) electric vehicle charging and vehicle-to-grid applications; (4) demand response; (5) energy management services; (6) microgrids; and (7) resiliency technology and services. However, this revolutionary transformation is not being experienced to the same degree across regions, states, utility service territories, or even customer classes. In those places where this revolution is progressing relatively fast, the transformation is taking many varied forms.

Q. Are you familiar with NextEra's affiliates?

A. Yes. I am principally familiar with two of NextEra's affiliates: (1) NextEra Energy Resources, LLC ("NER"); and (2) Florida Power & Light Company ("FPL"). NER is an independent power producer and developer of predominantly utility-scale generation resources, many of them renewably powered. NER operates in several different states. FPL operates a highly centralized, traditional vertically-integrated utility model in Florida.

Q. In light of the trends you discuss above, how would you characterize the relative position of NER?

A. NER focuses on building mostly clean, modern power plants outside of Florida. NER has only recently entered the distributed energy resources market through its acquisition of Smart Energy Capital, and claims that it has completed more than 70 MW of distributed solar generating plants.[7] When considering that NER's total operating portfolio include 21,095 MW of generation, NER has not demonstrated a core commitment to or strategic vision for distributed renewable energy generation. NER has developed a few other solar resources, but does not appear to do business in demand-response markets, in energy-efficiency services, in microgrid development, in electric vehicle or vehicle-to-grid applications and services, or in other smart-grid systems or technologies.

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[7] *See* NextEra's homepage at http://www.nexteraenergyresources.com/what/distGen.shtml.

Q. Can you also opine on the relative position of FPL?

A. FPL's most recent FPL Ten-Year Power Plant Site Plan (2015-2024) ("Site Plan") that was filed with the Florida Public Service Commission[8] illustrates the approach that FPL takes to the provision of electric service, and contains the following:

- FPL has 25,008 MW of summer peaking capacity in place, and plans to increase that amount to 29,154 MW by 2024.[9]
- FPL plans to increase its reliance on natural gas for energy as a percent from 68.2% to 72.5% between 2015 and 2024.[10]
- By 2024, FPL expects that solar energy will represent about 0.5% of utility energy generated in its system.[11]
- Since December 2014, FPL has substantially reduced its Demand Side Management programs, which is reflective of its receipt of a favorable order from the Florida Public Service Commission in the Florida Energy Efficiency and Conservation Act proceeding ("FEECA").[12] Resulting from this proceeding, FPL reduced its energy efficiency goals by more than 90% and eliminated its customer-sited solar pilot program entirely.

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8 *See* Applicants Response to DBEDT-IR-153 (providing the following link to FPL's most recent Site Plan, https://www.fpl.com/company/pdf/10-year-site-plan.pdf). Below, all page references to the Site plan can be accessed via that link.

9 Site Plan, Schedule 7.1, p. 93.

10 *Id.*, at Schedule 6.2, p. 92.

11 *Id.*

12 *See* Order No. PSC-14-0696-FOF-GU, issued December 16, 2014, in Docket Nos. 130199 through 130205, *in re: Commission review of numeric goals (Florida Power & Light Company, Duke Energy Florida, Inc., Tampa Electric Company, Gulf Power Company, JEA, Orlando Utilities Commission, Florida Public Utilities Company)*.

- FPL plans no improvements, but to only maintain, its system-wide load factor between 2015 and 2024, moving from 58.7% to 56.7% during that period. The FPL system is heavily driven by peak demand.[13]
- FPL plans to increase sales of electricity to residential customers over the next ten years, from an average of 1,135 kWh per month per customer in 2015 to 1,185 kWh per month per customer in 2024, which would essentially reverse the trend of FPL's declining sales experienced over the past 10 years.[14]

Q. Based on these facts, what do you conclude about whether FPL's experience will be beneficial to the HECO Companies?

A. Taken as a whole, FPL operates a very traditional mainland integrated electric utility business, with a traditional focus on load-building and the pursuit of lower-unit rates through volume and economies of scale. Although this model and FPL's access to abundant low-priced fossil fuels has resulted in low per-kWh rates, FPL residential customers use more than twice the amount of electricity than customers in Hawaii. The average FPL residential customer uses an average of 1,135 kWh per month, compared to an average 514 kWh per month in Hawaii, and an average U.S. residential consumption of about 909 kWh per month. I am not convinced that the economies of system and plant scale that have allowed FPL to achieve its objectives in Florida will translate well to Hawaii.

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[13] *Id.*, at Schedule 3.3, p. 44.

[14] *Id.*, at Schedule 2.1, p. 39.

Q. How has FPL engaged in utility transformation?

A. FPL is not recognized as a leader in utility transformation. FPL has aggressively deployed automated meter systems, distribution automation, and distribution management systems, which could facilitate the integration of renewable resources. However, FPL maintains a central-station fleet of generators that are overwhelmingly fossil-fueled and nuclear. As of March 31, 2015, fewer than 3,000 of FPL's 4.7 million customers have interconnected rooftop solar systems on the FPL system. Applicants Response to DBEDT-IR-28. In short, I indicated above that the revolutionary transformation the electric utility industry is experiencing can take many forms and varies in degree across regions. To the extent FPL has engaged in utility transformation, that transformation was not on par with the issues Hawaii has addressed and will be addressing in the future.

Q. What is your understanding of Hawaii's clean energy transformation?

A. I recognize Hawaii as a leader in the utility-transformation process. The passage of Act 97, which set the course for a transition to 100% Renewable Portfolio Standards ("RPS") by 2045, is among the latest in a series of important policy commitments toward utility transformation in Hawaii. This transformation is exemplified by Commission Staff's "Inclinations" paper attached to its Decision and Order No. 32052 in Docket No. 2012-0036[15] and the Commission's other April 28, 2014 issuances that provided key policy, resource planning and operational compliance directives intended to reveal and determine

[15] *In the Matter of Public Utilities Commission Regarding Integrated Resource Planning*, Docket No. 2015-0036, Order No. 32052, Exhibit A (*Commission's Inclinations on the Future of Hawaii's Electric Utilities*) (Apr. 28, 2014).

the reasonableness of the HECO Companies' future resource plans. While observers recognize that the island geography for Hawaii is unique among the states, the move towards greater renewable integration is seen as a complementary driver for changes that utilities are facing everywhere. For example, the Commission Staff's "Inclinations" is remarkably similar to the Reforming the Energy Vision documents underpinning the utility transformation efforts ongoing in the State of New York.[16]

Q. What implications does Hawaii's utility-transformation process have on the broader industry?

A. As a result of its leadership in setting the path to a clean energy future, Hawaii offers huge promise and opportunity to the entire electric utility industry to learn from Hawaii's experiences. The State can chart the course for others to follow, and Hawaii will offer an exciting opportunity for its electric utilities to gain a transferrable competitive advantage in successfully completing a clean-energy transformation. Essentially, Hawaii is a test bed for issues that many states will grapple with in the near future. Even for states, like New York, that are also on the leading edge of the utility-transformation process, Hawaii serves as a leader given the nature of the issues it has already faced. I note, for example, the relatively high deployment of distributed generation in Hawaii as compared to other states. With so much to offer as a result of its regulatory context, Hawaii has the right to expect a lot from this Proposed Transaction or any similar transaction.

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[16] Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Commencing Proceeding (April 25, 2014).

Q. Please summarize how the standard for review, the issues to be addressed, and the regulatory context fit together.

A. My opinion is that the question is not whether any other partner could help the HECO Companies complete their clean-energy transformation. Because the State of Hawaii has already dictated the goal of a clean-energy transformation, the State's electric utilities must achieve this objective regardless of corporate ownership. The question is therefore whether NextEra has established that its Proposed Transaction meets the Commission's standards by offering significant additional benefits, and by not bringing significant, adverse consequences that cannot be effectively mitigated. Thus, review of the Application and other evidence in this matter should be informed by addressing the following fundamental questions:

- Does the Proposed Transaction demonstrate that the Applicants are committed to accomplishing the policy goals of the State of Hawaii relating to the provision of electric service?
- Do the Applicants demonstrate the kind of vision and experience necessary to meet any challenges that lie ahead and to take advantage of opportunities that the clean energy transformation presents?
- Do the Applicants demonstrate in the record a commitment to management accountability for turning Proposed Transaction plans into commitments, commitments into obligations, and obligations into performance measures for the successor companies that result in incremental benefits to ratepayers and the State?

C. Adequacy of the Application in Producing Evidence to Support a Commission Order Approving the Proposed Transaction

Q. What is your understanding of the Applicants' burden of production in this Proposed Transaction?

A. Again, while I am not offering a legal opinion, it is my understanding that under Hawaii law and practice, the Applicants bear the burden of producing adequate competent evidence upon which the Commission may base an order approving the Proposed Transaction. Pursuant to Commission Order Nos. 32695 and 32739, this evidence must support affirmative findings and conclusions relating to whether the Proposed Transaction adequately addresses the issues identified by the Commission.

Q. In your opinion, are there any deficiencies in the Application and the record of evidence submitted in this matter?

A. Yes. Below, I document some of the most important gaps in supporting evidence that still remain by quoting from the Application and Applicants' information request responses:

- Application at p. 42, n.57: "Unless and until the Proposed Change of Control is approved and consummated, NextEra Energy will be unable to identify the specific plans and projects that NextEra Energy would implement as the owner of the Hawaiian Electric Companies, as such plans and projects can only feasibly be developed after NextEra Energy has sufficient time and access to information and resources as owner to better understand the strengths and any limitations in the Hawaiian Electric Companies' respective electric grids, systems, operations, and plans. NextEra Energy is willing to commit to file for Commission review its specific plans on how it will strengthen and accelerate the Hawaiian Electric Companies' clean energy transformation following consummation of the Proposed Change of Control."

- DBEDT-IR-17: "The Applicants have not identified or developed measurement tools for quantifying how NextEra Energy will strengthen and accelerate the Hawaiian Electric Companies' clean energy transformation relative to what would be accomplished on a standalone basis."
- CA-IR-140: "An analysis has not yet been performed on how much sooner the clean energy transformation could be accomplished. Unless and until the Proposed Change of Control is approved and consummated, NextEra Energy will be unable to identify the specific plans and projects that NextEra Energy would implement in order to accelerate and facilitate the clean energy transformation, as such plans and projects can only feasibly be developed after NextEra Energy has had sufficient time and access to information and resources as owner to better understand the strengths and any limitations of the Hawaiian Electric Companies' respective electric grids, systems, operations, and plans."
- Exhibit-7, at pp. 34-35: "NextEra Energy [has no] clean energy plans that are different from those of the Hawaiian Electric Companies. . . .This is not to suggest that there is no room for improvement in Hawaiian Electric's existing plans. The point is simply that Hawaiian Electric's existing plans are being evaluated in other dockets, and at this point we have nothing further to add."
- DBEDT-IR-100: "Applicants have not identified or developed measurement tools for quantifying the achievement of the strengthening and acceleration of the clean energy

transformation . . . ."

- DBEDT-IR-127: "NextEra Energy believes that the [Power Supply Improvement Plans ('PSIPs')] are responsive to the Commission's inclinations. However, only upon completion and consummation of the proposed change of control can NextEra Energy have access to the full range of information and resources it needs to provide a complete assessment of the PSIPs as they relate to the Inclinations."

I note that DBEDT witness Mark Glick also documents in his testimony the Applicants' failure thus far in the proceeding to produce specific evidence of plans and commitments relating to how NextEra can or will accelerate and strengthen the HECO Companies' clean energy transformation.

Q. What do you conclude based on this lack of evidence?

A. Taken in context and as a whole, the Applicants have failed to proffer, in their initial Application, as submitted in their testimony and as supplemented through discovery, material and reliable evidence upon which to base a conclusion that the Proposed Transaction is likely to strengthen and accelerate the HECO Companies' clean energy transition. As such, the Applicants have not met their burdens of production or proof in establishing that approval of the Proposed Transaction would be reasonable, in the public interest, and that the Applicants will be, in their combined form, fit, willing, and able to perform requisite services in Hawaii.

III. DISCUSSION OF SPECIFIED ISSUES FROM ORDER NO. 32739

Issue 1. Whether the Proposed Transaction is in the Public Interest.

Q. Do you believe the Proposed Transaction is in the Public Interest?

A. Based on the current record in this proceeding, I conclude that the Proposed Transaction, as currently constituted, is not in the public interest. I discuss specific concerns with the Proposed Transaction in this regard in my response to certain of the sub-parts to Issue 1 as set forth in Order No. 32739. Mr. Glick also responds to certain of the sub-issues to Issue 1 specified in Order No. 32739, and discusses four overarching concerns illustrating why, as a general matter, he concludes that the Proposed Transaction, as currently constituted, is not in the public interest.

Issues 1.b. Whether the Proposed Transaction, if approved, provides significant, quantifiable benefits to the HECO Companies' ratepayers in both the short and the long term beyond those proposed by the HECO Companies in recent regulatory filings.

Q. Do you believe that the Proposed Transaction, if approved, would provide significant quantifiable benefits to the HECO Companies ratepayers in both the short and the long term beyond those proposed by the HECO Companies' in recent regulatory filings?

A. The Applicants assert that the Proposed Transaction will result in cost savings from financial efficiencies and from lower cost debt.[17] The Applicants anticipate annual savings from HECO debt refinancing to be approximately $2 million and anticipate further annual savings from lower debt costs to be in the range of $200,000 in year one to

[17] Based on projected capital expenditures from 2015 to 2019, the Applicants anticipate annual savings from lower debt costs that range from $200,000 in year one to $2.4 million in year five. Applicants Exhibit-33, at p. 27, lines 5 to 14.

$2.4 million in year five.[18] However, Applicants have not proffered a capital expenditures plan on which any savings could be based. Rather, the Applicants focus on hypothetical, ill-defined projects and merely state that "the projected savings in debt costs and capital expenditures, which are quite significant, would persist for the lives of those securities and those assets, and *presumably* flow through to customers during and after the end of the base rate moratorium." Applicants Response to DBEDT-IR-88 (emphasis added).

To the extent savings are realized in the form of lower financing costs, the Applicants provide no guarantee that such savings will flow to ratepayers.

Q. Do you have any other concerns on whether any incremental and quantifiable benefits will accrue to the HECO Companies' customers?

A. Yes, I do. The Applicants assert that the combined companies will enjoy lower costs due to NextEra's size and experience in procurement, planning, and other functions. I am not confident that these benefits will be realized for two reasons. First, there are the inherent challenges and logistical costs of working in the island environment. It is not clear that purchasing power or experience as a mainland utility would generate any unique, incremental benefits to the HECO Companies' customers that would not be otherwise available in the absence of the Proposed Transaction. In simple terms, there is no evidence in the record that enjoying discount prices from volume purchases on electrical or other equipment and supplies will translate into savings on procurements in Hawaii. Second, the evidence submitted in this case is largely that NextEra and the HECO Companies have yet to sit down to explore where actual benefits could arise and to

[18] *Id.* at pp. 27-29.

develop plans to harvest those benefits. *See, e.g.*, Applicants Response to DBEDT-IR-16 (stating specific opportunities for cost savings enabled by the Proposed Transaction will not be identified until post-close). Given what is at stake in this proceeding—monopoly control over the provision of transmission and distribution service to 95% of Hawaii's electric customers—I do not recommend that the Commission take the leap of faith called for by the Applicants up to this point in the proceeding.

Issue 1.d. Whether the proposed financing and corporate restructuring proposed in the Application is reasonable.

Q. Have the Applicants proposed any meaningful protective measures to ensure that the risks of adverse consequences from the corporate restructuring are managed, and that the resulting Proposed Transaction would therefore be reasonable?

A. No. Mr. Glick addresses the deficiencies in the corporate restructuring aspects of the Applicants' proposal. In addition, the Applicants have failed to propose or proactively commit to any ring-fencing provisions that would protect the HECO Companies from risks associated with affiliates within the NextEra family. As one example, if NextEra's credit rating is downgraded due to a failed investment wholly unrelated to Hawaii, the HECO Companies should be held harmless. The failure to offer any such protections leads me to believe that the corporate restructuring proposed in the Application is not reasonable.

Issue 1.e. Whether adequate safeguards exist to prevent cross subsidization of any affiliates and to ensure the Commission's ability to audit the books and records of the HECO Companies, including affiliate transactions.

Q. Do you have any concerns as to whether adequate safeguards exist to prevent cross subsidization of any affiliates and to ensure the Commission's ability to audit the books and records of the HECO Companies, including affiliate transactions?

A. Yes, I do. Other utility mergers and acquisitions have included provisions to protect against cross subsidization and potential problems with affiliate transactions.[19] It is not clear why the Applicants do not propose comparable provisions to address similar concerns in Hawaii. I do not recommend that the Commission approve the Proposed Transaction without first establishing minimal protections. Even then, much more would be required to meet the public interest standard.

Issue 1.g. Whether the Proposed Transaction, if approved, will enhance or detrimentally impact the State's clean energy goals.

Q. Does the proposed change of control entail risk and challenges to Hawaii's clean energy future?

A. As DBEDT witness Mark Glick explains in his testimony, the State of Hawaii, by law and regulation, has undertaken an ambitious and important strategy to transition its energy systems to more sustainable, affordable, and environmentally responsible operations, including a shift to 100% RPS by 2045. The important consideration is whether the proposed change of control favorably impacts the clean energy transition as compared to a no-transaction future. The Applicants have set out their argument that,

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[19] Maryland Public Service Commission Case No. 9361, Order No. 86990 at A-31 to A-38 (May 15, 2015) ("Maryland Order No. 86990"), available at: http://webapp.psc.state.md.us/newIntranet/Casenum/NewIndex3_VOpenFile.cfm?ServerFilePath=C:\Casenum\9300-9399\9361\\271.pdf.

essentially, NextEra brings size and economies of scale in operations, acquisition, and financing to mitigate risks and challenges associated with the clean energy transition to an extent. However, in my opinion, the capabilities, business strategies, and actions of the proposed organization, post-change of control, entail a number of important risks and new challenges that are not adequately addressed in the record of this proceeding and that could detrimentally impact the State's clean energy goals. These increased risks and challenges constitute adverse consequences of the Proposed Transactions that must be addressed, and if possible, mitigated should the Commission choose to issue an order approving the proposed change of control. Again, however, it is important to recognize that mitigating harm is different than meeting the public interest standard's requirements to produce incremental benefits.

Q. Please discuss in more detail the additional risks and challenges associated with the Proposed Transaction?

A. These additional risks include, most notably, the following:

- Increased burden and inefficiency in regulatory oversight.
- Differences between the centralized utility-controlled model of FPL and the Commission's vision of a competitive, distributed energy services utility for Hawaii.
- Steeper and longer learning curve for NextEra due to its lack of experience and expertise in utility transformation, slowing and burdening the changes that the Hawaii companies are already committed to undertaking (or required to undertake), and the attendant risk of "least-common denominator" solutions for the entire NextEra organization diluting and undermining the progress required for Hawaii.

- Unwitting or intentional transfer of the practice of opposing energy efficiency and customer-owned solar generation from Florida to Hawaii.

Q. Do the Applicants admit these risks or challenges and the potential for adverse consequences as a result of the Proposed Transaction?

A. No. DBEDT asked Applicants to identify all real or potential adverse consequences of the Proposed Transaction. Applicants Response to DBEDT-IR-89. Applicants' response states, in full:

> The Applicants do not anticipate any adverse consequences as a result of the proposed merger transaction. As the testimony referred to in this information request states:
>
>> In addition to the benefits achieved through rate commitments and merger savings, the Applicants have offered a suite of service quality, employment, governance, financial, community involvement, regulatory, and affiliate conduct commitments that are highly favorable as compared to other recent utility-industry mergers. Taken as a whole, these commitments protect the State's electric consumers from any adverse consequences of the merger and establish a framework in which the State's energy initiatives can be accelerated and implemented in a manner that is cost effective, responsive to local concerns, environmentally sound, and socially responsible.
>
> Applicants Exhibit-33 at 8:1-9.

Q. How do the Applicants reconcile their position, which you described earlier, that the content of plans, such as clean energy plans, should not be an issue in this proceeding with the assertion that the Commission should recognize no risk of adverse consequences for the Proposed Transaction?

A. They do not satisfactorily reconcile their position in this regard. It appears that for the Applicants, the absence of detailed plans is evidence of the absence of risk, and that efforts to fill the gaps in their planning are speculative as a result. As an example, the Applicants were asked whether NextEra's methods, technologies, and experience "may not actually help the [HECO] Companies achieve" system operation control system improvements faster and more efficiently than they could as a standalone company." The Applicants' response was: (1) to object to the question as calling for speculation, (2) to reassert their position that they "believe" that benefits will accrue from NextEra involvement, and (3) that this belief is unsupported by any specific analyses of system operations. Applicants Response to DBEDT-IR-112.

Q. Do you believe that the Proposed Transaction will enhance the State's clean energy goals?

A. I have serious doubts about whether the Proposed Transaction will actually enhance the State's clean energy goals. These doubts are based on the policies, practices, and actions of the NextEra companies, particularly FPL, and on the absence of evidence in the record or in response to information requests thus far. As discussed previously in my testimony, in numerous responses to information requests, the Applicants have stated that: (1) they have not formulated any specific plans that would serve to enhance the State's clean energy goals; and (2) they do not plan on considering the issue until after consummation of the Proposed Transaction.

Q. Are there specific areas where the NextEra companies fail to bring needed experience and skills so as to enhance Hawaii's ability to achieve the State's clean energy goals?

A. Yes, there are. Areas where the NextEra companies lack additional experience and demonstrated skills include:

- Neither NER nor FPL brings any additional skills or experience to benefit HECO Companies in meeting the objective of modernizing the grid so as to support the maximum level of cost-effective renewable resources. The Applicants admit they do not have similar experience as the HECO Companies in operating a distribution utility with a high volume of generation from distributed solar. *See* Applicants Response to DBEDT-IR-73.

- NextEra and FPL have offered no evidence of direct and relevant experience and expertise in increasing portfolio diversity with renewables within the context of a balanced supply portfolio.
- Neither NextEra nor FPL offer any evidence of skills or experience in developing or operating a state-of-the art distribution system to accommodate distributed energy resources, or to support bi-directional energy flows with customer-generators.
- While FPL has deployed smart meters and associated infrastructure, the NextEra companies have minimal practical experience with grid flexibility technology and service deployment to enhance penetration of distributed and renewable generation.
- While FPL has experience with retirement of older fossil units and replacement with new fossil units, NextEra lacks any practical experience with replacing substantial amounts of fossil-fired generation with renewable energy generation.
- Neither NextEra nor FPL cite any significant experience in the development or operation of microgrids or integrated energy districts.
- Neither NextEra nor FPL has any significant experience in developing, operating, or contracting for fuel from a liquefied natural gas importation facility.
- Neither NextEra nor FPL cites any significant experience in unbundling of ancillary service markets and opening access for third-party providers.

- Neither NextEra nor FPL claims any experience in performing as a world-leading operator of a high-renewables electricity grid.

Integrating renewable distributed generation is a major premise underlying the State's energy policies. However, utility-scale generation will have some role to play. I have concerns about NextEra's experiences in other jurisdictions. FPL accounts for 46% of total electric sales in Florida,[20] which has not seen significant development of utility scale renewables. Table 1, based on 2013 data from the U.S. Department of Energy's Energy Information Administration, shows that the share of renewable energy generation in Florida is much smaller than in Hawaii and the United States as a whole.

Table 1: Net Renewable Electricity Generation, 2013 (GWh)

Location	Utilities	Independent Power Producers	Total	Utility Generation as % of Total Renewable Generation	Total All Generation	Renewable Generation as % of All Generation
Hawaii	29	798	827	3.5%	9,521	8.7%
Florida	262	2,221	2,483	10.6%	216,828	1.1%
United States	32,417	189,045	221,462	14.6%	3,903,715	5.6%

Source: Table 3.14 & 3.6, Electric Power Annual, U.S. EIA (March 2013).[21]

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[20] Florida Electricity Profile 2013, Table 3. The EIA extracted Florida information from its 2013 "Annual Electric Power Industry Report" to generate the Profile. Available at http://www.eia.gov/electricity/state/Florida/.

[21] Table 3.14. Net Generation from Renewable Sources Excluding Hydroelectric by State, by Sector, 2013 and 2012 (Thousand Megawatt hours); available at http://www.eia.gov/electricity/annual/html/epa_03_14.html; and Table 3.6. Net Generation by State, by Sector, 2013 and 2012 (Thousand Megawatthours); available at http://www.eia.gov/electricity/annual/html/epa_03_06.html.

Given FPL's poor record in diversifying its native generation fleet with utility-scale renewables,[22] it is not clear from the record and plans submitted to date whether the HECO Companies will be working more with the aggressive renewable energy developer, NER, or with the old-fashioned non-renewable utility, FPL.

Q. Based on these findings, what do you conclude?

A. My conclusion is that, in spite of NextEra's prodigious size and balance sheet, it brings to the Proposed Transaction very little directly applicable experience or expertise in tackling some of the most significant electric utility and electric service issues facing the HECO Companies, Hawaii ratepayers, and the State of Hawaii. Based on the lack of affirmative evidence to the contrary, I therefore cannot conclude that the Proposed Transaction will enhance the State's clean energy goals.

Issue 1.h. Whether the transfer, if approved, would potentially diminish competition in Hawaii's various energy markets and, if so, what regulatory safeguards are required to mitigate such adverse impacts.

Q. What are your findings on whether the Proposed Transaction would potentially diminish competition in Hawaii's various energy markets?

A. The Application is a bit at odds with itself with regard to competition in Hawaii's various energy markets that would flow from the Proposed Transaction. The Applicants' assertions regarding benefits point to putative efficiency and savings benefits that would accrue from having NextEra-scale companies procuring goods, materials, and services; and developing utility-scale generation and other energy infrastructure.[23] This implies a

[22] As noted previously, FPL intends to increase its reliance on natural gas over the next ten years, from 68.2% to 72.5%. *See* FPL's Ten-Year Power Plant Site Plan (2015-2024), which was filed with the Florida Public Service Commission and is available from Applicants Response to DBEDT-IR-153.

[23] *See, e.g.*, Applicants Exhibit-1, at pp. 9, 17; Applicants Exhibit-7, at p. 22.

diminished opportunity for competitive service providers in Hawaii post-close, except as vendors and suppliers to the newly combined companies, and it implies new challenges for these entities in working with a business whose parent and decision-making authority reside thousands of miles away.

Q. **What do we know about NextEra and FPL's experience in competitive electricity markets that informs a conclusion about the impact of the Proposed Transaction on competitive energy markets in Hawaii?**

A. Neither NextEra nor FPL has significant experience as the incumbent utility service provider or distribution utility system manager in a highly competitive electricity generation and services market. A review of high-level data from the most recent Electric Power Annual[24] produced by the U.S. Department of Energy's Energy Information Administration paints a telling picture of the state of electricity competition in Florida, as compared with Hawaii and the United States as a whole. As Table 2 below shows, the Florida competitive non-utility electricity generation market is extremely small in comparison with that in Hawaii and in the broader United States.

As set out in Table 1 above, the market share for renewable energy generation in Florida was more than five times smaller than in Hawaii or the United States as a whole.

[24] Electric Power Annual, with data for 2013, U.S. EIA (Mar. 2015). available at http://www.eia.gov/electricity/annual/.

Table 2: Net Electricity Generation, 2013 (GWh)

Location	Utilities	Independent Power Producers	Total	Utility Generation as % of Total
Hawaii	5,748	3,773	9,521	60.4%
Florida	202,527	14,301	216,828	93.4%
United States	2,388,058	1,515,657	3,903,715	61.2%

Source: Table 3.6, Electric Power Annual, U.S. EIA (March 2013).[25]

As such, I conclude, based upon the current record, that the Proposed Transaction could potentially diminish competition in Hawaii's various energy markets. DBEDT offers its recommendations on the regulatory safeguards that are required to mitigate such adverse impacts in Mr. Glick's testimony, and specifically in his discussion on Issue 6. It is important to emphasize that safeguards intended to mitigate harm are not the same as provisions that result in incremental benefits as required by the public interest standard.

Issue 2. Whether the Applicants are fit, willing, and able to properly provide safe, adequate, reliable electric service at the lowest reasonable cost in both the short and the long term.

Q. Do you have any comments on Issue 2?

A. Yes. Below, I focus on the ability of the Applicants to provide improvements in reliable electric service in response to Issue 2.b. My response on this issue is also relevant to the Commission's Issue 1.c. I also address whether the Proposed Transaction will improve the financial soundness of the HECO Companies in response to Issue 2.d.

[25] Table 3.6. Net Generation by State, by Sector, 2013 and 2012 (Thousand Megawatthours), available at http://www.eia.gov/electricity/annual/html/epa_03_06.html.

<u>Issue 2.b. Whether the Proposed Transaction, if approved, will result in an improvement in service and reliability for the customers of the HECO Companies.</u>

Q. Have you reviewed the evidence in the Application and information responses regarding whether the Proposed Transaction will result in improvement in service and reliability for HECO Companies' customers?

A. Yes. While I am not a technical expert on electrical engineering, I did review the assertions and commitments offered by the Applicants addressing service and reliability issues. Essentially, the position of the Applicants is that reliability will be improved simply because NextEra will acquire the HECO Companies. All studies or plans to support that assertion will not be conducted or produced until after the Proposed Transaction is approved. Even assuming the Proposed Transaction ultimately results in improved reliability, the Applicants proposal to deliver on providing customer benefits until some unspecified point in the future shifts risks away from the Applicants and onto customers. As a comparison, it is worth noting that the Applicants will receive many value benefits on the front end (i.e., an acquisition premium for HEI shareholders and the desired approval for NextEra).

The Applicants' position on reliability benefits is consistent with the general pattern regarding numerous "commitments." That is, the Applicants make promises about future benefits but provide no plans for actually providing those benefits.

Q. Can you provide other examples of this pattern of unsubstantiated claims?

A. Yes. I note that several parties used the discovery process in an attempt to get the Applicants to provide detailed information. The following examples illustrate that the

Applicants have not demonstrated that reliability will be improved as a result of the Proposed Transaction:

- CA-IR-162 – The Applicants have not yet initiated an integration planning process to evaluate how to best integrate the companies in a way that benefits customers.
- CA-IR-172 – The Applicants have not yet taken any position on whether reliability-related performance should be subject to financial rewards or penalties. The Applicants have not yet determined whether to establish reliability improvement targets for the HECO Companies on an individual or collective basis. NextEra states its commitment to improve reliability with reference to a baseline year, which is to be established post-change of control.
- PUC-IR-88 – The details regarding "reasonable improvements" in service reliability cannot be known or established until after the Proposed Transaction is closed, and until NextEra has had sufficient opportunity as owner to understand the strengths or limitations of HEI's respective electric grids, systems, operations and plans. However, NextEra claims it would be appropriate to use reliability performance indices, such as SAIDI and SAIFI, to measure performance.
- PUC-IR-101 – NextEra has not undertaken an assessment of the HECO Companies current event or outage management programs as part of the due diligence process underpinning this Proposed Transaction, although it claims that NextEra has substantial experience on these issues, particularly due to FPL's experience with hurricanes in Florida.

- LOL-IR-94 – Plans to address service disruptions will not be available for Commission review until a point in time after the proposed change of control has been approved and consummated.
- CA-IR-275 – The Applicants do not envision establishing a baseline reliability standard until after closing the Proposed Transaction, against which fulfillment of Applicants' reliability commitment could be measured; and have not yet determined whether reliability enhancement plans are needed to improve reliability; but expect to receive recovery of prudently incurred costs associated with any reliability enhancement plans that are pursued for the benefit of customers whether execution of such plans would entail recovery of costs from ratepayers.
- CA-IR-286 – The Applicants have not conducted or commissioned any analysis that quantifies improvements in service or reliability that will result from the proposed change of control.
- CA-IR-296 – The Applicants have conducted no analysis to determine whether a mutual assistance agreement between FPL and the HECO Companies would be beneficial in major storm restoration.
- DBEDT-IR-128 – The Applicants have not conducted an evaluation of cyber security health with a view toward identifying opportunities for mutual cooperation in improving cyber security health but will determine whether there are opportunities for NextEra to provide assistance to HEI to increase overall reliability and security of the system to lessen cyber vulnerability.

Q. Have NextEra, FPL, or any other affiliate been subject to penalties for the violation of reliability standards by any regulatory agency or court?

A. Yes. Though I have not undertaken an exhaustive search, my preliminary review has uncovered two such orders. On March 19, 2015, the Federal Energy Regulatory Commission ("FERC") reviewed and approved a penalty of $52,000 assessed by the North American Reliability Corporation ("NERC").[26] NERC assessed the penalty for NextEra's violation of two Reliability Standards because it failed to timely reduce the output of a generator pursuant to an out-of-merit energy instruction issued by its reliability coordinator, the Electric Reliability Council of Texas, Inc.

In addition, on October 8, 2009, FERC approved a stipulation and consent agreement that FPL would pay a civil penalty of $25,000,000.[27] The penalty followed a Bulk Electric System load loss event in Florida, more commonly referred to as the Florida Blackout, which occurred on February 26, 2008. The Florida Blackout led to a loss of 22 transmission lines, 4,300 MW of generation, and 3,650 MW of customer service or load in the lower two-thirds of Florida. The blackout was caused by the actions of a FPL engineer and an FPL control center dispatcher. FPL's actions violated multiple Reliability Standards. The $25,000,000 penalty was not only for civil fines but for expected improvements to enhance reliability measures and projects.

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[26] *North American Elec. Reliability Corp.*, 150 FERC ¶ 61,212 (2015).

[27] *Florida Blackout*, 129 FERC ¶ 61,016 (2009).

Q. Why are these prior penalties and violations important in the context of this proceeding?

A. In spite of the assertion that the Proposed Transaction will enhance reliability for the benefit of Hawaii electric customers, the Applicants have not yet conducted analysis or planning critical to substantiate that assertion. In addition, NextEra and FPL's violation of Reliability Standards, despite the fact that violations of mandatory Reliability Standards on the mainland are subject to monetary penalties, casts doubt as to their ability to improve reliability in Hawaii. Finally, the Applicants have yet to make any specific commitments regarding reliable service. As a result, the Application is deficient and conclusions that the Proposed Transaction is in the public interest and that the Applicants are fit, willing, and able are not adequately supported.

Issue 2.d. Whether the Proposed Transaction, if approved, will improve the financial soundness of the HECO Companies.

Q. Have you reviewed the Application and other evidence in this proceeding relating to whether the Proposed Transaction, if approved, would improve the financial soundness of the HECO Companies?

A. Yes. Although I am not a financial analysis expert, I have noticed a pattern in the Applicants' posture relating to this issue that is similar to Applicants' declarations on the majority of relevant issues in this proceeding. That is, the Applicants have not conducted and have not committed to conducting detailed analysis of the impacts of the Proposed Transaction on the financial soundness of the HECO Companies to provide any insight into this issue. For example:

- CA-IR-120 – The Applicants indicated that they will not provide to the parties, under seal or otherwise, confidential financial forecasts for HEI's utility business obtained by contract with J.P. Morgan. The Applicants cite a contract restriction on the information, and claim they will produce the documents if J.P. Morgan authorizes them to do so. However, Applicants do not explain why they would contract for financial forecasts that cannot be shared in regulatory proceedings.
- PUC-IR-84 – In addressing issues raised regarding out-of-state control, Applicants expect that NextEra senior executive leaders would be involved in making decisions related to specific corporate decisions (e.g., capital resource allocations, assigning human resources, budgetary control, technology platform and systems, and availability of out-of-state NextEra executive personnel to address regulatory or service quality issues) as they apply across the enterprise of NextEra companies. NextEra claims that its decision-making power over the HECO Companies will provide benefits, in part, due to its technical expertise and experiences. *See, e.g.*, Applicants' Exhibit-1 at p. 21. Despite NextEra's assertions, the removal of HECO Companies' local control will result in a detriment, not a benefit. This finding is especially true if NextEra's decision-making is representative of the actions taken by FPL in limiting both its developments, as well as its customers' developments, of renewable generation.
- HREA-IR-16 – The Applicants explain that the current make-whole penalty payment conditions in the HECO Companies' debt instruments make restructuring its debt uneconomic. The Applicants anticipate that the HECO Companies will have access to capital at a cost that reflects savings of 25 basis points. They state that this reduced

cost of debt could accrue substantial cumulative savings, but such savings would depend entirely on the level of borrowing the HECO Companies do in the future, which is not known.

- OP-IR-11 – The Applicants have no current intention to change the HECO Companies' debt/equity mix. As such, the Application contains no evidence of whether modification of the debt/equity mix for the HECO Companies might offer an opportunity for financial benefits.
- HIEC-IR-6 – The Applicants explain that none of HELCO's outstanding indebtedness will be repaid as part of the Proposed Transaction.
- CA-IR-131 – Based on positive reports from rating agencies, the Applicants expect improvement in the financial status of the HECO Companies as a result of the Proposed Transaction. They state this benefit will result from anticipated lower costs of debt. The amount of this benefit cannot be quantified in the absence of more information about the amount of debt that the HECO Companies expect to issue post-closure. The Applicants expect additional savings as a result of debt refinancing (when possible), and reduced transaction costs when securing debt.
- AES-IR-8, FOL-IR-55 – The Applicants believe that the combined companies will improve the credit risk associated with the HECO Companies' roles as generation project offtakers, and therefore generate savings for customers due to lower purchased power costs. However, the Applicants have conducted no analysis of this conclusion.

Q. What do you conclude from this evidence?

A. While there may be reasons to anticipate financial benefits due to the HECO Companies becoming part of the larger NextEra group of companies, there is inadequate evidence to determine whether there will be net benefits to the HECO Companies and Hawaii ratepayers. For example, integration planning has not been conducted to fully inform capital spending and debt projections. In addition, the Applicants have not analyzed whether the HECO Companies face a risk premium cost that would be meaningfully reduced in negotiating purchase power contracts as an offtaker. Finally, the Applicants have offered no commitment to generating financial benefits for the benefit of Hawaii customers. If the expected benefits do not accrue, there is no consequence or penalty to the Applicants under the Proposed Transaction.

Issue 3. Whether the Proposed Transaction, if approved, would diminish, in any way, the Commission's current regulatory authority over the HECO Companies, particularly in light of the fact that the ultimate corporate control of the HECO Companies will reside outside of the State.

Q. Please share your thoughts on whether the Proposed Transaction could increase the burden for the Commission or otherwise cause inefficiency in regulatory oversight.

A. The Commission will have great difficulty exercising efficient regulatory oversight of the successor Companies. Audits and reviews will become more complex and prolonged. The sheer increase in the size of the organization that the Commission has to deal with, especially during the several years of transition following closing of the Proposed Transaction, will mean a more complex, time-consuming regulatory relationship.

Q. Please explain.

A. The Applicants assert benefits in the ability to draw on the greater resources of NextEra, including the 14,000 NextEra employees, stating that "[a]s part of the NextEra Energy organization, the Hawaiian Electric Companies will also be able to draw on a deep reservoir of talented, experienced, and committed personnel from across the enterprise." Application at 28-29. However, these 14,000 NextEra employees already have full-time jobs. Few if any have ever worked with a utility infrastructure and operations like those that exist in Hawaii. The combined companies will have to hire new staff and train them to understand Hawaii issues and regulatory requirements. Obtaining support from these remote employees, as well as consultants and contractors, will be challenging. A substantial time difference exists between Florida and Hawaii. It is also doubtful that the accessible and useful reservoir of information and assets will be as deep or as wide as the Applicants assert. To the extent that such support is needed by the HECO Companies to address the many and vital issues facing Hawaii, the result will be, at a minimum, delay. If permissions and approvals are required, as one would expect for any regulated entity dealing with its regulators, further delay and a measure of confusion is likely as the combined companies assign responsibilities, learn by doing, and exercise managerial control.

Q. Do the Applicants adequately address these potential challenges in regulatory efficiency arising out of staffing, management, and operational issues?

A. No. As with other issues relating to the standard of review, Applicants do not provide sufficient evidence of commitments or plans adequate to support a conclusion that the public interest and fitness tests are satisfied by the Proposed Transaction. The following examples buttress my finding in this regard:

- CA-IR-28 – The Applicants have not created or provided a detailed, department-by-department, post-merger management organization chart. NextEra has also not indicated the planned executive management positions that will be occupied by employees, who will reside in Hawaii, or how their reporting relationships will occur. Instead, Applicants have only stated that the President and management team of the HECO Companies will be based in Hawaii, and the President will report directly to the Chairman and CEO of NextEra.
- DBEDT-IR-124 – The Applicants have not determined when they will create an integrated organizational chart and make no commitment in that regard.
- CA-IR-29 – In addressing issues raised by out-of-state control, Applicants "expect" that NextEra senior executive leaders would be involved in making decisions related to specific corporate decisions (e.g., capital resource allocations, assigning human resources, budgetary control, technology platform and systems, and availability of out-of-state NextEra executive personnel to address regulatory or service quality issues) as they apply across the enterprise of NextEra companies.
- DBEDT-IR-118 – The Applicants state that they do not consider elimination of open or vacant positions as an involuntary workforce reduction. Thus, open positions could be eliminated, foreclosing job opportunities for Hawaii residents without violating the commitment regarding involuntary attrition.
- DBEDT-IR-46 – The Applicants did not consider and do not propose any specific time period to apply to their commitment that the HECO Companies will continue to

be headquartered in Honolulu following the proposed change of control or that the HECO Companies will continue to operate under their respective current company names and from their existing operating locations. Nor do the Applicants attach any time period to the commitment that the president and management team of Hawaiian Electric Companies will be based in Hawaii.

- HIEC-IR-1 – The Applicants state that it is not possible to set forth how staffing levels would change if the Proposed Transaction is approved, as integration discussions and decisions have not yet occurred.

Each of these examples identifies information that is pertinent to the public interest inquiry. At best, the Applicants simply are not deep enough into the integration process to provide meaningful answers. At worst, the Applicants' proposal will be a step backward. Under both scenarios, the Applicants have failed to meet the public interest standard.

Issue 4. Whether the financial size of the HECO Companies relative to NextEra's other affiliates would result in a diminution of regulatory control by the Commission.

Q. Do the regulatory efficiency and management issues that you identified inform whether the financial size of the combined companies under the Proposed Transaction would result in a diminution of regulatory control by the Commission?

A. The financial size of the combined companies under the Proposed Transaction may have the impact of diminishing regulatory control by the Commission. The Application suggests that regulatory control *could* be improved if the combined companies can bring the benefits of more sophisticated and efficient reporting, data management, inventory, accounting, and other systems to the relationship between the Commission and the HECO Companies. However, this potential remains uncertain given the lack of integration planning that the Applicants have conducted, and the lack of any proposed merger conditions that would mitigate potential risks identified by such planning. Moreover, from my own personal experience as a regulator, I know that financial and other audits are typically more challenging, complex, and expensive with multi-state businesses than with wholly intra-state utility operations. In sum, I do not find sufficient evidence to conclude that the Proposed Transaction would or would not result in a diminution of Commission regulatory control.

Issue 5. Whether NextEra, FPL, or any other affiliate has been subject to compliance or enforcement orders issued by any regulatory agency or court.

Q. Have NextEra, FPL, or any other affiliate been subject to compliance or enforcement orders issued by any regulatory agency or court?

A. Yes. In response to information requests in this proceeding, NextEra has provided a list of 50 orders issued by regulatory authorities addressing NextEra companies' violations of both Reliability Standards and other directives issued by its regulatory authorities.[28] NextEra does not claim that this list is comprehensive. Rather, it states this list reflects its "reasonable due diligence" inquiry into these orders. As indicated above, I have identified two FERC/NERC enforcement matters relating to NextEra that address issues of principal importance in this proceeding—reliability of service.

Q. Has NextEra provided evidence that it has a corporate culture of compliance comparatively greater than that of the HECO Companies?

A. No. NextEra has not provided any analysis or comparisons to demonstrate its ability to comply with the Commission's directives on a consistent basis is greater than that of the

[28] *See* Applicants Response to CA-IR-224.

HECO Companies. Without such evidence, there is no basis upon which to ascertain that NextEra's takeover will provide any quantifiable and incremental benefits for its ability to comply with the Commission's directives. Rather, NextEra merely suggests that it can maintain the *status quo*.

Q. Would NextEra's ability to comply with the Commission's directives further the public interest?

A. A strong compliance culture would increase regulatory efficiency and reduce administrative burdens. A history of non-compliance, of course, indicates otherwise. At this point in the development of the record, there is not enough evidence to support a conclusion that the Proposed Transaction will result in a stronger compliance culture in the combined companies.

Issue 6. Whether any conditions of approval for the Proposed Transaction would be effective in addressing the shortcomings and potential adverse consequences of the Proposed Transaction.

Q. Does DBEDT have any recommendations on any conditions of approval for the Proposed Transaction would be effective in addressing the shortcomings and potential adverse consequences of the Proposed Transaction?

A. Yes. Given the numerous deficiencies Mr. Glick and I have identified with respect to the Proposed Transaction as currently structured, the Commission should strongly consider rejecting the proposal without further consideration. However, in the event the Commission elects to issue an order approving the Application, the Commission should adopt DBEDT's recommended conditions as discussed in Mr. Glick's testimony.

IV. CONCLUSION

Q. Please summarize your conclusions.

A. Based on my experience in the electric utility industry, I reviewed the Application, supporting testimony and exhibits, and responses to interrogatories through the lens of the applicable legal standard and the importance of the clean energy transformation that Hawaii is undertaking. As proposed, I conclude that the Applicants failed to demonstrate that the Proposed Transaction is in the public interest. On the one hand, the Proposed Transaction gives rise to a number of concerns and potential harms. The Applicants have failed to offer enforceable risk-mitigation measures to protect against that harm. On the other hand, the Applicants fail to demonstrate that the Proposed Transaction will provide incremental benefits that could not otherwise be achieved in a no-transaction future. Rather, the Applicants rely on generalized statement about anticipated benefits, and they fail to offer any detail explaining precisely what actions they would take to ensure those benefits are realized. The Applicants' attempt to meet the public interest standard simply falls short of what is required.

Q. Does this conclude your testimony?

A. Yes.

Karl R. Rábago

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Summary

Nationally recognized leader and innovator in electricity and energy law, policy, and regulation. Experienced as a public utility regulatory commissioner, educator, research and development program manager, utility executive, business builder, federal executive, corporate sustainability leader, consultant, and advocate. Thought leader and practice expert in organizational transformation. Highly proficient in advising, managing and interacting with government agencies and committees, the media, citizen groups, and business associations. Successful track record of working with US Congress, state legislatures, governors, regulators, city councils, business leaders, researchers, academia, and community groups. National and international contacts through experience with Austin Energy, AES Corporation, US Department of Energy, Texas Public Utility Commission, Jicarilla Apache Tribal Utility Authority, Cargill Dow LLC (now NatureWorks, LLC), Rocky Mountain Institute, CH2M HILL, Houston Advanced Research Center, Environmental Defense Fund, and others. Skilled attorney, negotiator, and advisor with more than twenty years experience working with diverse stakeholder communities in electricity policy and regulation, emerging energy markets development, clean energy technology development, electric utility restructuring, smart grid development, and the implementation of sustainability principles. Extensive regulatory practice experience. Nationally recognized speaker on energy, environment and sustainable development matters. Managed staff as large as 250; responsible for operations of research facilities with staff in excess of 600. Developed and managed budgets in excess of $300 million. Law teaching experience at University of Houston Law Center and U.S. Military Academy at West Point. Trial experience as a Judge Advocate. Post doctorate degrees in environmental and military law. Military veteran.

Employment

PACE ENERGY AND CLIMATE CENTER, PACE UNIVERSITY SCHOOL OF LAW

Executive Director: May 2014—Present.

Leader of a team of professional and technical experts in energy and climate law, policy, and regulation. Secure funding for and manage execution of research, market development support, and advisory services for a wide range of funders, clients, and stakeholders with the overall goal of advancing clean energy deployment, climate responsibility, and market efficiency. Supervise a team of employees, consultants, and adjunct researchers. Provide learning and development opportunities for law students. Coordinate efforts of the Center with and support the environmental law faculty. Additional activities:

- Co-Director and Principal Investigator, Northeast Solar Energy Market Coalition (2015-present). The NESEMC is a US Department of Energy's SunShot Initiative Solar Market Pathways project. Funded under a cooperative agreement between the US DOE and Pace University, the NESEMC seeks to harmonize solar market policy and advance best policy and regulatory practices in the northeast United States.
- Chairman of the Board, Center for Resource Solutions (1997-present). CRS is a not-for-profit organization based at the Presidio in California. CRS developed and manages the Green-e Renewable Electricity Brand, a nationally and internationally recognized branding program for green power and green pricing products and programs. Past chair of the Green-e Governance Board (formerly the Green Power Board).
- Director, Interstate Renewable Energy Council (IREC) (2012-present). IREC focuses on issues impacting expanded renewable energy use such as rules that support renewable energy

and distributed resources in a restructured market, connecting small-scale renewables to the utility grid, developing quality credentials that indicate a level of knowledge and skills competency for renewable energy professionals.

RÁBAGO ENERGY LLC

Principal: July 2012—Present. Consulting practice dedicated to providing expert witness and policy formulation advice and services to organizations in the clean and advanced energy sectors. Recognized national leader in development and implementation of award-winning "Value of Solar" alternative to traditional net metering. Additional information at www.rabagoenergy.com.

AUSTIN ENERGY – THE CITY OF AUSTIN, TEXAS

Vice President, Distributed Energy Services: April 2009—June 2012. Executive in 8th largest public power electric utility serving more than one million people in central Texas. Responsible for management and oversight of energy efficiency, demand response, and conservation programs; low-income weatherization; distributed solar and other renewable energy technologies; green buildings program; key accounts relationships; electric vehicle infrastructure; and market research and product development. Executive sponsor of Austin Energy's participation in an innovative federally-funded smart grid demonstration project led by the Pecan Street Project. Led teams that successfully secured over $39 million in federal stimulus funds for energy efficiency, smart grid, and advanced electric transportation initiatives. Additional activities included:

- Director, Renewable Energy Markets Association. REMA is a trade association dedicated to maintaining and strengthening renewable energy markets in the United States.
- Membership on Pedernales Electric Cooperative Member Advisory Board. Invited by the Board of Directors to sit on first-ever board to provide formal input and guidance on energy efficiency and renewable energy issues for the nation's largest electric cooperative.

THE AES CORPORATION

Director, Government & Regulatory Affairs: June 2006—December 2008. Government and regulatory affairs manager for AES Wind Generation, one of the largest wind companies in the country. Manage a portfolio of regulatory and legislative initiatives to support wind energy market development in Texas, across the United States, and in many international markets. Active in national policy and the wind industry through work with the American Wind Energy Association as a participant on the organization's leadership council. Also served as Managing Director, Standards and Practices, for Greenhouse Gas Services, LLC, a GE and AES venture committed to generating and marketing greenhouse gas credits to the U.S. voluntary market. Authored and implemented a standard of practice based on ISO 14064 and industry best practices. Commissioned the development of a suite of methodologies and tools for various greenhouse gas credit-producing technologies. Also served as Director, Global Regulatory Affairs, providing regulatory support and group management to AES's international electric utility operations on five continents. Additional activities:

- Director and past Chair, Jicarilla Apache Nation Utility Authority (1998 to 2008). Located in New Mexico, the JAUA is an independent utility developing profitable and autonomous utility services that provides natural gas, water utility services, low income housing, and energy planning for the Nation. Authored "First Steps" renewable energy and energy efficiency strategic plan.

HOUSTON ADVANCED RESEARCH CENTER

Group Director, Energy and Buildings Solutions: December 2003—May 2006. Leader of energy and building science staff at a mission-driven not-for-profit contract research organization based in The Woodlands, Texas. Responsible for developing, maintaining and expanding upon technology development, application, and commercialization support programmatic activities, including the Center for Fuel Cell Research and Applications, an industry-driven testing and evaluation center for near-commercial fuel cell generators; the Gulf Coast Combined Heat and Power Application Center, a state and federally funded initiative; and the High Performance Green Buildings Practice, a consulting and outreach initiative. Secured funding for major new initiative in carbon nanotechnology applications in the energy sector. Developed and launched new and integrated program activities relating to hydrogen energy technologies, combined heat and power, distributed energy resources, renewable energy, energy efficiency, green buildings, and regional clean energy development. Active participant in policy development and regulatory implementation in Texas, the Southwest, and national venues. Frequently engaged with policy, regulatory, and market leaders in the region and internationally. Additional activities:

- President, Texas Renewable Energy Industries Association. As elected president of the statewide business association, leader and manager of successful efforts to secure and implement significant expansion of the state's renewable portfolio standard as well as other policy, regulatory, and market development activities.
- Director, Southwest Biofuels Initiative. Established the Initiative acts as an umbrella structure for a number of biofuels related projects, including emissions evaluation for a stationary biodiesel pilot project, feedstock development, and others.
- Member, Committee to Study the Environmental Impacts of Windpower, National Academies of Science National Research Council. The Committee was chartered by Congress and the Council on Environmental Quality to assess the impacts of wind power on the environment.
- Advisory Board Member, Environmental & Energy Law & Policy Journal, University of Houston Law Center.

CARGILL DOW LLC (NOW NATUREWORKS, LLC)

Sustainability Alliances Leader: April 2002—December 2003. Founded in 1997, NatureWorks, LLC is based in Minnetonka, Minnesota. Integrated sustainability principles into all aspects of a ground-breaking biobased polymer manufacturing venture. Responsible for maintaining, enhancing and building relationships with stakeholders in the worldwide sustainability community, as well as managing corporate and external sustainability initiatives. NatureWorks is the first company to offer its customers a family of polymers (polylactide – "PLA") derived entirely from annually renewable resources with the cost and performance necessary to compete with packaging materials and traditional fibers; now marketed under the brand name "Ingeo."

- Successfully completed Minnesota Management Institute at University of Minnesota Carlson School of Management, an alternative to an executive MBA program that surveyed fundamentals and new developments in finance, accounting, operations management, strategic planning, and human resource management.

ROCKY MOUNTAIN INSTITUTE

Managing Director/Principal: October 1999–April 2002. In two years, co-led the team and grew annual revenues from approximately $300,000 to more than $2 million in annual grant and consulting income. Co-authored "Small Is Profitable," a comprehensive analysis of the benefits of distributed energy resources. Worked to increase market opportunities for clean and distributed energy resources through consulting, research, and publication activities. Provided consulting and advisory services to help business and government clients achieve sustainability through application and incorporation of Natural Capitalism principles. Frequent appearance in media at international, national, regional and local levels.

- President of the Board, Texas Ratepayers Organization to Save Energy. Texas R.O.S.E. is a non-profit organization advocating low-income consumer issues and energy efficiency programs.
- Co-Founder and Chair of the Advisory Board, Renewable Energy Policy Project-Center for Renewable Energy and Sustainable Technology. REPP-CREST was a national non-profit research and internet services organization.

CH2M HILL

Vice President, Energy, Environment and Systems Group: July 1998–August 1999. Responsible for providing consulting services to a wide range of energy-related businesses and organizations, and for creating new business opportunities in the energy industry for an established engineering and consulting firm. Completed comprehensive electric utility restructuring studies for the states of Colorado and Alaska.

PLANERGY

Vice President, New Energy Markets: January 1998–July 1998. Responsible for developing and managing new business opportunities for the energy services market. Provided consulting and advisory services to utility and energy service companies.

ENVIRONMENTAL DEFENSE FUND

Energy Program Manager: March 1996–January 1998. Managed renewable energy, energy efficiency, and electric utility restructuring programs for a not-for-profit environmental group with a staff of 160 and over 300,000 members. Led regulatory intervention activities in Texas and California. In Texas, played a key role in crafting Deliberative Polling processes. Initiated and managed nationwide collaborative activities aimed at increasing use of renewable energy and energy efficiency technologies in the electric utility industry, including the Green-e Certification Program, Power Scorecard, and others. Participated in national environmental and energy advocacy networks, including the Energy Advocates Network, the National Wind Coordinating Committee, the NCSL Advisory Committee on Energy, and the PV-COMPACT Coordinating Council. Frequently appeared before the Texas Legislature, Austin City Council, and regulatory commissions on electric restructuring issues.

UNITED STATES DEPARTMENT OF ENERGY

Deputy Assistant Secretary, Utility Technologies: January 1995–March 1996. Manager of the Department's programs in renewable energy technologies and systems, electric energy systems, energy efficiency, and integrated resource planning. Supervised technology research, development and deployment activities in photovoltaics, wind energy, geothermal energy, solar thermal energy, biomass energy, high-temperature superconductivity, transmission and distribution, hydrogen, and electric and magnetic fields. Developed, coordinated, and advised on legislation, policy, and renewable energy technology development within the Department, among other agencies, and with Congress. Managed, coordinated, and developed international agreements for cooperative activities in renewable energy and utility sector policy, regulation, and market development between the Department and counterpart foreign national entities. Established and enhanced partnerships with stakeholder groups, including technology firms, electric utility companies, state and local governments, and associations. Supervised development and deployment support activities at national laboratories. Developed, advocated and managed a Congressional budget appropriation of approximately $300 million.

STATE OF TEXAS

Commissioner, Public Utility Commission of Texas. May 1992–December 1994. Appointed by Governor Ann W. Richards. Regulated electric and telephone utilities in Texas. Laid the groundwork for legislative and regulatory adoption of integrated resource planning, electric utility restructuring, and significantly increased use of renewable energy and energy efficiency resources. Appointed by Governor Richards to co-chair and organize the Texas Sustainable Energy Development Council. Served as Vice-Chair of the National Association of Regulatory Utility Commissioners (NARUC) Committee on Energy Conservation. Member and co-creator of the Photovoltaic Collaborative Market Project to Accelerate Commercial Technology (PV-COMPACT), a nationwide program to develop domestic markets for photovoltaics. Member, Southern States Energy Board Integrated Resource Planning Task Force. Member of the University of Houston Environmental Institute Board of Advisors.

LAW TEACHING

Professor for a Designated Service: Pace University Law School, 2014-present. Non-tenured member of faculty. Courses taught: Energy Law. Supervise a student clinical effort that engages in a wide range of advocacy, analysis, and research activities in support of the mission of the Pace Energy and Climate Center.

Associate Professor of Law: University of Houston Law Center, 1990–1992. Full time, tenure track member of faculty. Courses taught: Criminal Law, Environmental Law, Criminal Procedure, Environmental Crimes Seminar, Wildlife Protection Law. Provided *pro bono* legal services in administrative proceedings and filings at the Texas Public Utility Commission. Launched a student clinical effort that reviewed and made recommendations on utility energy efficiency program plans.

Assistant Professor: United States Military Academy, West Point, New York, 1988–1990. Member of the faculty in the Department of Law. Honorably discharged in August 1990, as Major in the Regular Army. Courses taught: Constitutional Law, Military Law, and Environmental Law Seminar. Greatly expanded the environmental law curriculum and laid foundation for the concentration program in law. While carrying a full time teaching load, earned a Master of Laws degree in Environmental Law. Established a program for subsequent environmental law professors to obtain an LL.M. prior to joining the faculty.

LITIGATION

Trial Defense Attorney and Prosecutor, U.S. Army Judge Advocate General's Corps, Fort Polk, Louisiana, January 1985–July 1987. Assigned to Trial Defense Service and Office of the Staff Judge Advocate. Prosecuted and defended more than 150 felony-level courts-martial. As prosecutor, served as legal officer for two brigade-sized units (approximately 5,000 soldiers), advising commanders on appropriate judicial, non-judicial, separation, and other actions. Pioneered use of some forms of psychiatric and scientific testimony in administrative and judicial proceedings.

NON-LEGAL MILITARY SERVICE

Armored Cavalry Officer, 2d Squadron 9th Armored Cavalry, Fort Stewart, Georgia, May 1978–August 1981. Served as Logistics Staff Officer (S-4). Managed budget, supplies, fuel, ammunition, and other support for an Armored Cavalry Squadron. Served as Support Platoon Leader for the Squadron (logistical support), and as line Platoon Leader in an Armored Cavalry Troop. Graduate of Airborne and Ranger Schools. Special training in Air Mobilization Planning and Nuclear, Biological and Chemical Warfare.

Formal Education

LL.M., Environmental Law, Pace University School of Law, 1990: Curriculum designed to provide breadth and depth in study of theoretical and practical aspects of environmental law. Courses included: International and Comparative Environmental Law, Conservation Law, Land Use Law, Seminar in Electric Utility Regulation, Scientific and Technical Issues Affecting Environmental Law, Environmental Regulation of Real Estate, Hazardous Wastes Law. Individual research with Hudson Riverkeeper Fund, Garrison, New York.

LL.M., Military Law, U.S. Army Judge Advocate General's School, 1988: Curriculum designed to prepare Judge Advocates for senior level staff service. Courses included: Administrative Law, Defensive Federal Litigation, Government Information Practices, Advanced Federal Litigation, Federal Tort Claims Act Seminar, Legal Writing and Communications, Comparative International Law.

J.D. with Honors, University of Texas School of Law, 1984: Attended law school under the U.S. Army Funded Legal Education Program, a fully funded scholarship awarded to 25 or fewer officers each year. Served as Editor-in-Chief (1983–84); Articles Editor (1982–83); Member (1982) of the Review of Litigation. Moot Court, Mock Trial, Board of Advocates. Summer internship at Staff Judge Advocate's offices. Prosecuted first cases prior to entering law school.

B.B.A., Business Management, Texas A&M University, 1977: ROTC Scholarship (3–yr). Member: Corps of Cadets, Parson's Mounted Cavalry, Wings & Sabers Scholarship Society, Rudder's Rangers, Town Hall Society, Freshman Honor Society, Alpha Phi Omega service fraternity.

Selected Publications

"The Value of Solar Tariff: Net Metering 2.0," The ICER Chronicle, Ed. 1, p. 46 [International Confederation of Energy Regulators] (December 2013)

"A Regulator's Guidebook: Calculating the Benefits and Costs of Distributed Solar Generation," co-author, Interstate Renewable Energy Council (October 2013)

"The 'Value of Solar' Rate: Designing An Improved Residential Solar Tariff," Solar Industry, Vol. 6, No. 1 (Feb. 2013)

"A Review of Barriers to Biofuels Market Development in the United States," 2 Environmental & Energy Law & Policy Journal 179 (2008)

"A Strategy for Developing Stationary Biodiesel Generation," Cumberland Law Review, Vol. 36, p.461 (2006)

"Evaluating Fuel Cell Performance through Industry Collaboration," co-author, Fuel Cell Magazine (2005)

"Applications of Life Cycle Assessment to NatureWorks™ Polylactide (PLA) Production," co-author, Polymer Degradation and Stability 80, 403-19 (2003)

"An Energy Resource Investment Strategy for the City of San Francisco: Scenario Analysis of Alternative Electric Resource Options," contributing author, Prepared for the San Francisco Public Utilities Commission, Rocky Mountain Institute (2002)

"Small Is Profitable: The Hidden Economic Benefits of Making Electrical Resources the Right Size," co-author, Rocky Mountain Institute (2002)

"Socio-Economic and Legal Issues Related to an Evaluation of the Regulatory Structure of the Retail Electric Industry in the State of Colorado," with Thomas E. Feiler, Colorado Public Utilities Commission and Colorado Electricity Advisory Panel (April 1, 1999)

"Study of Electric Utility Restructuring in Alaska," with Thomas E. Feiler, Legislative Joint Committee on electric Restructuring and the Alaska Public Utilities Commission (April 1, 1999)

"New Markets and New Opportunities: Competition in the Electric Industry Opens the Way for Renewables and Empowers Customers," EEBA Excellence (Journal of the Energy Efficient Building Association) (Summer 1998)

"Building a Better Future: Why Public Support for Renewable Energy Makes Sense," Spectrum: The Journal of State Government (Spring 1998)

"The Green-e Program: An Opportunity for Customers," with Ryan Wiser and Jan Hamrin, Electricity Journal, Vol. 11, No. 1 (January/February 1998)

"Being Virtual: Beyond Restructuring and How We Get There," Proceedings of the First Symposium on the Virtual Utility, Klewer Press (1997)

"Information Technology," Public Utilities Fortnightly (March 15, 1996)

"Better Decisions with Better Information: The Promise of GIS," with James P. Spiers, Public Utilities Fortnightly (November 1, 1993)

"The Regulatory Environment for Utility Energy Efficiency Programs," Proceedings of the Meeting on the Efficient Use of Electric Energy, Inter-American Development Bank (May 1993)

"An Alternative Framework for Low-Income Electric Ratepayer Services," with Danielle Jaussaud and Stephen Benenson, Proceedings of the Fourth National Conference on Integrated Resource Planning, National Association of Regulatory Utility Commissioners (September 1992)

"What Comes Out Must Go In: The Federal Non-Regulation of Cooling Water Intakes Under Section 316 of the Clean Water Act," Harvard Environmental Law Review, Vol. 16, p. 429 (1992)

"Least Cost Electricity for Texas," State Bar of Texas Environmental Law Journal, Vol. 22, p. 93 (1992)

"Environmental Costs of Electricity," Pace University School of Law, Contributor–Impingement and Entrainment Impacts, Oceana Publications, Inc. (1990)

PRIOR TESTIMONY SUBMITTED BY KARL R. RÁBAGO, RÁBAGO ENERGY LLC (AS OF 15 JULY 2015)

Date:	**Proceeding:**	**Case/Docket #:**	**On Behalf Of:**
Dec. 21, 2012	VA Electric & Power Special Solar Power Tariff	Case # PUE-202-0064	Southern Environmental Law Center
May 10, 2013	Georgia Power Company 2013 IRP	Docket # 36498	Georgia Solar Energy Industries Association
Jun. 23, 2013	Louisiana Public Service Commission Re-examination of Net Metering Rules	Docket # R-31417	Gulf States Solar Energy Industries Association
Aug. 29, 2013	DTE (Detroit Edison) 2013 Renewable Energy Plan Review (Michigan)	Case # U-17302	Environmental Law and Policy Center
Sept. 5, 2013	CE (Consumers Energy) 2013 Renewable Energy Plan Review (Michigan)	Case # U-17301	Environmental Law and Policy Center
Sep. 27, 2013	North Carolina Utilities Commission 2012 Avoided Cost Case	Docket # E-100, Sub. 136	North Carolina Sustainable Energy Association
Oct. 18, 2013	Georgia Power Company 2013 Rate Case	Docket # 36989	Georgia Solar Energy Industries Association
Nov. 4, 2013	PEPCO Rate Case (District of Columbia)	Formal Case # 1103	Grid 2.0 Working Group & Sierra Club of Washington, D.C.
Apr. 24, 2014	Dominion Virginia Electric Power 2013 IRP	Case # PUE-2013-00088	Environmental Respondents
May 7, 2014	Arizona Corporation Commission Investigation on the Value and Cost of Distributed Generation	Docket No. E-00000J-14 -0023	Rábago Energy LLC (invited presentation and workshop participation)
Jul. 10, 2014	North Carolina Utilities Commission 2014 Avoided Cost Case	Docket # E-100, Sub. 140	Southern Alliance for Clean Energy

Jul. 23, 2014	Florida Energy Efficiency and Conservation Act, Goal Setting – FPL, Duke, TECO, Gulf	Docket Nos. 130199-EI, 130200-EI, 130201-EI, 130202-EI	Southern Alliance for Clean Energy
Sep. 19, 2014	Ameren Missouri's File No. Application for Authorization to Suspend Payment of Solar Rebates	ET-2014-0350, Tariff No. YE-2014-0494	Missouri Solar Energy Industries Association
Aug. 6, 2014	Appalachian Power Company 2014 Biennial Rate Review	Case No. PUE-2014 -00026	Southern Environmental Law Center (Environmental Respondents)
Aug. 13, 2014	Wisconsin Public Service Corp. 2014 Rate Application	Docket No. 6690-UR-123	RENEW Wisconsin and Environmental Law & Policy Center
Aug. 28, 2014	WE Energies 2014 Rate Application	Docket No. 05-UR-107	RENEW Wisconsin and Environmental Law & Policy Center
Sep. 18, 2014	Madison Gas & Electric Company 2014 Rate Application	Docket No. 3720-UR-120	RENEW Wisconsin and Environmental Law & Policy Center
Sep. 29, 2014	SOLAR, LLC v. Missouri Public Service Commission	Case No. 14AC-CC00316	SOLAR, LLC
Pending	Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs, etc.	California PUC Rulemaking 14-07-002	The Utility Reform Network (TURN)
Mar. 20, 2015	Orange and Rockland Utilities 2015 Rate Application	New York PSC Case 14-E-0493	Pace Energy and Climate Center
May 22, 2015	DTE Electric Company Rate Application	Michigan PSC Case No. U-17767	Michigan Environmental Council, NRDC, Sierra Club, and ELPC

BEFORE THE
HAWAII PUBLIC UTILITIES COMMISSION

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

VERIFICATION OF KARL RABAGO

County of Westchester)
State of New York)

I, Karl Rabago, verify that the foregoing Answering and Direct Testimony and supporting exhibits were prepared or compiled by me or under my supervision, and that the information contained therein is true and correct to the best of my knowledge, information, and belief.

Karl Rabago

Verified on this 17 day of July 2015.

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAI‘I

In the Matter of the Application of HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., MAUI ELECTRIC COMPANY, LIMITED, and NEXTERA ENERGY, INC. For Approval of the Proposed Change of Control and Related Matters.	Docket No. 2015-0022

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the Department of Business, Economic Development, and Tourism, State of Hawai‘i's Exhibit List, Direct Testimonies, and Supporting Exhibits in PUC Docket Number 2015-0022, upon the following parties, by delivering the original and eight copies to the PUC, two copies to the Consumer Advocate, and one copy by electronic transmission to each of the other parties listed below.

For **DIVISION OF CONSUMER ADVOCACY**

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HAWAI‘I ELECTRIC LIGHT COMPANY, INC., and
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For **KA LEI MAILE ALII HAWAIIAN CIVIC CLUB**

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For **DEPARTMENT OF THE NAVY,**
on behalf of the DEPARTMENT OF DEFENSE

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DATED: Honolulu, Hawaiʻi, July 20, 2015.

GREGG J. KINKLEY
Deputy Attorney General