

**From:** [Dean Nishina](#)  
**To:** [Kevin Johnson](#)  
**Subject:** Re: recent Hawaii Supreme Court ruling on the appeal of the Hawaii PUC decision on the Hu Honua PPA  
**Date:** Tuesday, May 14, 2019 10:50:00 AM

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Kevin,

How are you doing? Are you still doing business and visiting Hawaii?

It has been a while and I'm not sure if you are still representing Hu Honua's interests but, if you are, I had a couple of questions that I was hoping that you might be able to provide some answers or information.

What is the current status of the project in terms of construction? Is it completed or what is the expected completion date?

Given the recent ruling by the Hawaii Supreme Court, are there any thoughts/plans about the potential impact on the commercial operation of Hu Honua? I'm trying to get a sense of what I might expect in terms of the Sup. Ct. remand of the case back to the PUC of the PPA docket as well as the impact on the pending Hawaii Electric Light case. Was this something that the Hu Honua team was expecting and had planned for or was the ruling an unexpected blow?

Any insight that you might be able to provide would be extremely helpful and much appreciated.

Thanks,  
Dean Nishina  
Executive Director  
Division of Consumer Advocacy  
State of Hawaii, Dept. of Commerce and Consumer Affairs

  
 (fax)











**From:** [Kevin Johnson](#)  
**To:** [Dean Nishina](#); [Dean Nishina](#)  
**Subject:** great seeing you  
**Date:** Friday, May 24, 2019 7:29:46 PM

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[REDACTED]

[REDACTED] c

thanks for your time today! hope you and the fam have a great weekend!

**From:** [Kevin Johnson](#)  
**To:** [Dean Nishina](#)  
**Subject:** hello sir  
**Date:** Monday, September 16, 2019 3:02:45 PM

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any chance u can meet briefly today or tomorrow

## Dean Nishina

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**Subject:** meet w/ Kevin Johnson and Jeff Ono re: Hu Honua

**Start:** Fri 1/31/2020 4:30 PM

**End:** Fri 1/31/2020 6:00 PM

**Recurrence:** (none)

**Organizer:** Dean Nishina



**From:** [Kevin Johnson](#)  
**To:** [Dean Nishina](#)  
**Subject:** Mina: Honua Ola Op-ed  
**Date:** Sunday, August 30, 2020 8:28:12 AM  
**Attachments:** [Honua Ola Op-ed-Final082420.docx](#)  
[ATT00001.htm](#)

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## BIOMASS CAN PLAY AN IMPORTANT ROLE IN OUR RENEWABLE FUTURE

As a legislator who introduced the concept of a renewable portfolio standard (RPS), I am dismayed watching the RPS become just an aspiration, rather than a pragmatic policy tool to promote a cost-effective strategy to achieve a diverse portfolio of renewable resources.

Unfortunately, the Public Utilities Commission's (PUC) recent decision and order to deny the waiver from the competitive bid process for the Honua Ola Bioenergy Project (Honua Ola) on Hawaii Island fell short of fulfilling the pragmatic strategy of the RPS law.

Hawaii is becoming overly dependent on one resource: solar-plus-battery energy storage systems. And many mistakenly think solar is the panacea to all our energy challenges. But, like any good investment portfolio strategy, having a diverse RPS helps to reduce risk in many ways.

With this decision being highly focused on a cost comparison between biomass and solar, we are unwittingly limiting future opportunities to achieve the upper limits of the RPS and making it more expensive and technically challenging to achieve the goal of 100% RPS by 2045.

We all should be concerned about the fate of the Honua Ola project. First, a primary objective of Hawaii's energy policy is to move away from oil price volatility. Current oil prices are low due to lack of demand caused by the pandemic. However, in the past we have seen oil price spikes wreak havoc on Hawaii's economy.

Although priced higher than other renewables, Honua Ola offers stable and predictable pricing. And when Honua Ola's firm power cost is blended with other renewable resources in the system, their combined power purchase costs are generally lower than the blended price of purchasing these same renewables and fuel for HELCO's fossil plants.

Second, comparing biomass to solar is like comparing apples and oranges, biomass is firm resilient power which can run 24/7 and offer a unique set of attributes that make the electric grid more stable and reliable.

Solar is intermittent power but when paired with a 4-hour battery storage system, it offers cost-competitive pricing and other attributes important to the electric grid — but only as long as the battery has a charge. It's not an either-or proposition, both firm resilient biomass power and solar-plus-energy-storage resources should be used to provide electricity and ancillary services to operate the grid.

I am fortunate to live on the island of Kauai. Our utility, Kauai Island Utility Cooperative (KIUC), is often lauded for its aggressive installation of utility scale solar-plus-storage projects and the variety of renewable sources that power the grid. What is often understated is the huge challenge to run a stable and resilient grid on intermittent renewables.

While short-term battery storage is cost competitive, there are times when storm clouds blank out the sun for days at a time. Batteries have helped with the need for short-term storage, but until now, fossil fueled generators have been the backbone/workhorse of the electrical grid.

Recently, through ingenuity, KIUC engineers have taken an existing fossil fuel plant and configured and repurposed it to operate as a synchronous condenser that stores energy in its spinning generators to stabilize grid fluctuation and voltage, as well as providing power instantly as needed. Now, instead of running on fossil fuels, the plant can run on renewable resources such as solar, hydroelectric and Kauai's Green Energy biomass plant.

Hawaii's energy transformation requires a well-managed integration of parts of the electrical system for the seamless and reliable delivery of electricity. And like Kauai's biomass plant, Honua Ola can play an important role contributing to the backbone of Hawaii Island's system, delivering both the quality of power and the continuous quantity needed, which solar + battery cannot guarantee.

Although more than twice the cost of solar, Kauai's Green Energy biomass plant plays an important role in the stable operations of the Kauai's electrical grid and provides forestry and plant operations jobs. Hawaii Island should not lose this biomass opportunity from which Kauai has clearly benefitted.

Unless there are major technical and cost breakthroughs in the near future, 100% renewable is a journey that many of us will not see accomplished in our lifetime. However, we can lay a solid foundation for the next generation by combining pragmatism, diversity, and inspiration to make Hawaii's 100% renewable target possible. Failure is not an option in this endeavor.

Because of the significant infrastructure investments that need to be made, Hawaii has only one chance to get it right. Let's course correct and get it right on the Honua Ola Bioenergy Project.

**From:** [Kevin Johnson](#)  
**To:** [Dean Nishina](#)  
**Subject:** Re: Mina: Honua Ola Op-ed  
**Date:** Monday, August 31, 2020 2:49:34 AM

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that would be awesome ... pls  
provide times that work for you tues am and i will make myself available

thanks dean

On Aug 31, 2020, at 4:46 AM, Dean Nishina [REDACTED]  
wrote:

Thanks for sending.

I also received the text that you sent the other day. I may have time on Tuesday for a brief discussion. I have some general availability on Tuesday morning. Let me know if that might work for you.

Thanks,  
Dean Nishina  
Executive Director  
Division of Consumer Advocacy  
State of Hawaii, Dept. of Commerce and Consumer Affairs  
[REDACTED]  
[REDACTED] (fax)

---

**From:** Kevin Johnson [REDACTED]  
**Sent:** Sunday, August 30, 2020 8:28 AM  
**To:** Dean Nishina [REDACTED]  
**Subject:** Mina: Honua Ola Op-ed

**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

## Dean Nishina

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**Subject:** meeting w/ K. Johnson

**Start:** Tue 9/1/2020 11:30 AM

**End:** Tue 9/1/2020 12:30 PM

**Recurrence:** (none)

**Organizer:** Dean Nishina

**From:** [Kevin Johnson](#)  
**To:** [Dean Nishina](#)  
**Subject:** Re: Mina: Honua Ola Op-ed  
**Date:** Tuesday, September 1, 2020 11:16:14 AM

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thanks dean ... will try to call you between 11:30 – 12:15 ht

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**From:** Dean Nishina [REDACTED]  
**Date:** Tuesday, September 1, 2020 at 12:53 PM  
**To:** Kevin Johnson [REDACTED]  
**Subject:** RE: Mina: Honua Ola Op-ed

Hi,

I still have some general availability for the rest of the morning. Are you available at any time during the period from 10:30 – 12?

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**From:** Kevin Johnson [REDACTED]  
**Sent:** Monday, August 31, 2020 2:49 AM  
**To:** Dean Nishina [REDACTED]  
**Subject:** Re: Mina: Honua Ola Op-ed

**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

that would be awesome ... pls  
provide times that work for you tues am and i will make myself available

thanks dean

On Aug 31, 2020, at 4:46 AM, Dean Nishina [REDACTED] wrote:

Thanks for sending.

I also received the text that you sent the other day. I may have time on Tuesday for a brief discussion. I have some general availability on Tuesday morning. Let me know if that might work for you.

Thanks,  
Dean Nishina  
Executive Director  
Division of Consumer Advocacy  
State of Hawaii, Dept. of Commerce and Consumer Affairs  
[REDACTED]  
[REDACTED] (fax)

---

**From:** Kevin Johnson <[REDACTED]>  
**Sent:** Sunday, August 30, 2020 8:28 AM  
**To:** Dean Nishina [REDACTED]  
**Subject:** Mina: Honua Ola Op-ed

**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.



**From:** [Kevin Johnson](#)  
**To:** [Dean Nishina](#)  
**Subject:** honua ola  
**Date:** Saturday, October 17, 2020 5:46:12 AM

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hello sir

hope all is well with you and your family ...

i am in town through mon evening ... any chance you have time to meet on mon ?

thanks in advance for considering

ps: i have all of my negative covid paperwork in hand

**From:** [Kevin Johnson](#)  
**To:** [Dean Nishina](#)  
**Subject:** Re: honua ola  
**Date:** Sunday, October 18, 2020 5:56:45 AM

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thanks dean ... let's play it by ear - if u get any free timing and there's an opening pls let me know .... I do not need much notice ... will check in periodically

ps: testing and travel were unbelievable smooth ... we were on the first flight from sf to oahu... when we landed there were two check points that were both well manned and quite efficient ... passengers leave with QR codes that have to shown that reflect negative results when entering a restaurant, store, hotel etc

On Oct 18, 2020, at 12:03 AM, Dean Nishina [REDACTED] wrote:

I have a couple of filings that are due on Monday. So, I'm not sure of my availability until they're done. Just out of curiosity, how did the testing and travel go?

Get [Outlook for iOS](#)

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**From:** Kevin Johnson [REDACTED]  
**Sent:** Saturday, October 17, 2020 5:46:04 AM  
**To:** Dean Nishina [REDACTED]  
**Subject:** honua ola

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hello sir

hope all is well with you and your family ...

i am in town through mon evening ... any chance you have time to meet on mon ?

thanks in advance for considering

ps: i have all of my negative covid paperwork in hand

**From:** [Dean Nishina](#)  
**To:** [Kevin Johnson](#)  
**Subject:** RE: honua ola  
**Date:** Monday, October 19, 2020 5:57:00 PM

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Thanks for the info. I look forward to our next discussion. Maybe we will have the opportunity to discuss more enjoyable topics like NBA roster moves and why the Bulls front office don't seem to be positioning the team for a decent run at the playoffs.

In the meantime, stay safe and take care.

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**From:** Kevin Johnson [REDACTED]  
**Sent:** Monday, October 19, 2020 5:07 PM  
**To:** Dean Nishina [REDACTED]  
**Subject:** Re: honua ola

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thanks dean ...

headed back to cali early ...planning on returning in nov ... will try to get in your calendar ... stay safe sir - and thanks again

On Oct 19, 2020, at 7:20 PM, Dean Nishina [REDACTED] wrote:

Just following up on the text that I sent about an hour ago. I do have some general availability this afternoon now – if you're still available and interested in having a discussion.

If not, I hope you have a safe and uneventful trip back to the mainland.

Dean Nishina  
Executive Director  
Division of Consumer Advocacy  
State of Hawaii, Dept. of Commerce and Consumer Affairs  
[REDACTED]  
[REDACTED] (fax)

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**From:** Kevin Johnson [REDACTED]  
**Sent:** Sunday, October 18, 2020 5:57 AM  
**To:** Dean Nishina [REDACTED]  
**Subject:** Re: honua ola

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thanks dean ... let's play it by ear - if u get any free timing and there's an opening pls let me know .... I do not need much notice ... will check in periodically

ps: testing and travel were unbelievable smooth ... we were on the first flight from sf to oahu... when we landed there were two check points that were both well manned and quite efficient ... passengers leave with QR codes that have to shown that reflect negative results when entering a restaurant, store, hotel etc

On Oct 18, 2020, at 12:03 AM, Dean Nishina [REDACTED] wrote:

I have a couple of filings that are due on Monday. So, I'm not sure of my availability until they're done. Just out of curiosity, how did the testing and travel go?

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**From:** Kevin Johnson [REDACTED]  
**Sent:** Saturday, October 17, 2020 5:46:04 AM  
**To:** Dean Nishina [REDACTED]  
**Subject:** honua ola

**CAUTION:** This email originated from outside of Hawaii State Gov't / DCCA. Do not click links or open attachments unless you recognize the sender and are expecting the link or attachment.

hello sir

hope all is well with you and your family ...

i am in town through mon evening ... any chance you have time to meet on mon ?

thanks in advance for considering

ps: i have all of my negative covid paperwork in hand

## Dean Nishina

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**Subject:** Hu Honua (K. Johnson)

**Start:** Wed 6/9/2021 9:00 AM

**End:** Wed 6/9/2021 9:30 AM

**Recurrence:** (none)

**Organizer:** Dean Nishina

## Dean Nishina

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**Subject:** Call w/ Kevin Johnson

**Start:** Wed 7/7/2021 1:30 PM  
**End:** Wed 7/7/2021 2:00 PM

**Recurrence:** (none)

**Organizer:** Dean Nishina

## Dean Nishina

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**Subject:** call K. Johnson

**Start:** Tue 1/25/2022 5:00 PM

**End:** Tue 1/25/2022 6:00 PM

**Recurrence:** (none)

**Organizer:** Dean Nishina



## Dean Nishina

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**Subject:** Meet w/ K. Johnson

**Start:** Tue 3/15/2022 9:00 AM  
**End:** Tue 3/15/2022 9:30 AM

**Recurrence:** (none)

**Meeting Status:** Meeting organizer

**Organizer:** Dean Nishina

**From:** [Kevin Johnson](#)  
**To:** [Dean Nishina](#)  
**Cc:** [Kevin Johnson](#)  
**Subject:** [EXTERNAL] hob commitments  
**Date:** Monday, March 21, 2022 4:45:10 AM  
**Attachments:** [Proposed Condition language 3-19-22.docx](#)

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dean, per our conversation i wanted to send the current version of our commitments. we are still working with heco on theirs, but as you know that is out of our hands. that said, we are pushing as hard as we can. in advance of final word from them, i wanted you to be able to review the ones from our side in the event that you'd like to add and recommendations or suggestions that would make them stronger.

thank you in advance

kj

## **A. Hu Honua's Conditions of Approval**

As established in its testimonies, Hu Honua has committed and agreed to, as conditions of approval of the A&R PPA, the Project being (1) at least 30,000 MT carbon negative cumulatively over the 30-year term of the A&R PPA (no matter the level of actual dispatch), and (2) carbon negative by the year 2035 and each year thereafter until the end of the A&R PPA term.<sup>1</sup> In the event the annual GHG inventory shows that Hu Honua was not carbon negative for a given year from 2035 or cumulatively over the 30-year term, Hu Honua has financially committed to either (1) purchase sufficient carbon offsets to make the GHG inventory carbon negative, or (2) pay a monetary amount for the purpose of procuring sufficient carbon offsets to achieve a carbon negative inventory.<sup>2</sup>

To ensure that these two conditions of approval are realized, Hu Honua agrees to supplementary conditions of approval to enable the Commission to hold Hu Honua accountable and enforce its carbon negative commitments. These proposed conditions, as testified to at the Hearing and clarified during closing argument and this post-hearing brief, are as follows:

- Hu Honua agrees to place \$100,000 (or in the alternative, a range of up to \$450,000 if the Commission believes a higher amount is more appropriate)<sup>3</sup> of “seed money”, which may include marketable liquid assets, into a reserve fund or escrow account in Year 1 which will remain in the account for the entire 30 year A&R PPA term (or in the alternative, a lesser term if the Commission believes a lesser period of time is more appropriate) to serve as cushion of available funds to ensure that its carbon negative commitments are met. If there is any carbon sequestration deficit in the annual reporting to the PUC, Hu Honua will also place additional funds into the account each year over the 30-year term to cover the deficit and purchase carbon offsets (approximately \$15/ton).

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<sup>1</sup> Hu-Honua Testimony T-1, filed Sept. 16, 2021, at 7, 27, and 29-31.

<sup>2</sup> Hu Honua Testimony T-1, filed Sept. 16, 2021, at 32-33.

<sup>3</sup> [Insert Jay Griffin comment/question to Witness Miyata re the “whole amount”]

- Hu Honua agrees to a condition requiring Hu Honua to provide a minimum of 3 prospective names of independent verifiers to the PUC, allow all Parties to comment, then the PUC can approve which prospective names are qualified to perform the independent five-year verification, then Hu Honua will select the independent verifier from the PUC's approved list;
- Hu Honua agrees to a condition that within 60 months after a final, non-appealable approval order from the PUC, Hu Honua will provide documentation to the PUC demonstrating that it has secured additional acreage on Hawaii Island to provide the feedstock for the remaining term of the A&R PPA;
- Hu Honua agrees not to receive a preferential rate for any period of energy generation using out-of-state feedstock; rather, Hu Honua would only be able to recover the Avoided Cost Rate as published monthly by HELCO for such period assuming such rate is lower than the A&R PPA rate;
- Hu Honua agrees to the recommended conditions within Hu Honua's control described in Section II.F of the CA's Prehearing Statement of Position; and
- Hu Honua stipulates to ongoing review by the PUC for purposes of reviewing and enforcing Hu Honua's carbon negative commitments and any other commitments proffered by Hu Honua in this proceeding. If Hu Honua fails to meet any commitments, it agrees to cure any shortcomings within a reasonable time period to ensure that Hu Honua's commitments are met.

In addition, Hu Honua agrees to adopt any reasonable modifications and/or additional conditions ordered by the Commission that will enable the Commission to hold Hu Honua accountable and enforce any commitments and conditions of approval. Hu Honua would like to ensure that the benefits of the Project and its carbon negative commitments will be realized.

**From:** [Kevin Johnson](#)  
**To:** [Dean Nishina](#)  
**Subject:** [EXTERNAL] hob / ca follow-up documents  
**Date:** Friday, April 1, 2022 3:40:58 PM  
**Attachments:** [1-Proposed Condition language 3-19-22.pdf](#)  
[2-Extracted Pages to HHB's Post Hearing Brief.pdf](#)  
[3-Extracted Pages to CA's Errata to Its Statement of Position.pdf](#)

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hey dean,

appreciate the conversation earlier today.

pls see 3 attachments:

1. hob commitments from previous email
2. hob post hearing brief, filed 3/29 (which addresses ca's sop recommended conditions)
3. ca sop, filed 1/3

kevin

## **A. Hu Honua's Conditions of Approval**

As established in its testimonies, Hu Honua has committed and agreed to, as conditions of approval of the A&R PPA, the Project being (1) at least 30,000 MT carbon negative cumulatively over the 30-year term of the A&R PPA (no matter the level of actual dispatch), and (2) carbon negative by the year 2035 and each year thereafter until the end of the A&R PPA term.<sup>1</sup> In the event the annual GHG inventory shows that Hu Honua was not carbon negative for a given year from 2035 or cumulatively over the 30-year term, Hu Honua has financially committed to either (1) purchase sufficient carbon offsets to make the GHG inventory carbon negative, or (2) pay a monetary amount for the purpose of procuring sufficient carbon offsets to achieve a carbon negative inventory.<sup>2</sup>

To ensure that these two conditions of approval are realized, Hu Honua agrees to supplementary conditions of approval to enable the Commission to hold Hu Honua accountable and enforce its carbon negative commitments. These proposed conditions, as testified to at the Hearing and clarified during closing argument and this post-hearing brief, are as follows:

- Hu Honua agrees to place \$100,000 (or in the alternative, a range of up to \$450,000 if the Commission believes a higher amount is more appropriate)<sup>3</sup> of “seed money”, which may include marketable liquid assets, into a reserve fund or escrow account in Year 1 which will remain in the account for the entire 30 year A&R PPA term (or in the alternative, a lesser term if the Commission believes a lesser period of time is more appropriate) to serve as cushion of available funds to ensure that its carbon negative commitments are met. If there is any carbon sequestration deficit in the annual reporting to the PUC, Hu Honua will also place additional funds into the account each year over the 30-year term to cover the deficit and purchase carbon offsets (approximately \$15/ton).

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<sup>1</sup> Hu-Honua Testimony T-1, filed Sept. 16, 2021, at 7, 27, and 29-31.

<sup>2</sup> Hu Honua Testimony T-1, filed Sept. 16, 2021, at 32-33.

<sup>3</sup> [Insert Jay Griffin comment/question to Witness Miyata re the “whole amount”]

- Hu Honua agrees to a condition requiring Hu Honua to provide a minimum of 3 prospective names of independent verifiers to the PUC, allow all Parties to comment, then the PUC can approve which prospective names are qualified to perform the independent five-year verification, then Hu Honua will select the independent verifier from the PUC's approved list;
- Hu Honua agrees to a condition that within 60 months after a final, non-appealable approval order from the PUC, Hu Honua will provide documentation to the PUC demonstrating that it has secured additional acreage on Hawaii Island to provide the feedstock for the remaining term of the A&R PPA;
- Hu Honua agrees not to receive a preferential rate for any period of energy generation using out-of-state feedstock; rather, Hu Honua would only be able to recover the Avoided Cost Rate as published monthly by HELCO for such period assuming such rate is lower than the A&R PPA rate;
- Hu Honua agrees to the recommended conditions within Hu Honua's control described in Section II.F of the CA's Prehearing Statement of Position; and
- Hu Honua stipulates to ongoing review by the PUC for purposes of reviewing and enforcing Hu Honua's carbon negative commitments and any other commitments proffered by Hu Honua in this proceeding. If Hu Honua fails to meet any commitments, it agrees to cure any shortcomings within a reasonable time period to ensure that Hu Honua's commitments are met.

In addition, Hu Honua agrees to adopt any reasonable modifications and/or additional conditions ordered by the Commission that will enable the Commission to hold Hu Honua accountable and enforce any commitments and conditions of approval. Hu Honua would like to ensure that the benefits of the Project and its carbon negative commitments will be realized.



4. The Commission’s and Other Parties/Participants’ concerns relating to Issue No. 3 have been addressed.

At the Hearing, the Commission and other Parties/Participants expressed concerns regarding the Project’s pricing. Hu Honua has attempted to identify and address many of the concerns raised during the Hearing in the table attached hereto as **Exhibit D**.

**C. The A&R PPA Should be Approved as it is Prudent and in the Public Interest in Light of the A&R PPA’s Hidden and Long-Term Consequences (Benefits).**

Statement of Issues No. 4, provides:

4. Whether the terms of the Amended PPA are prudent and in the public interest, in light of the Amended PPA’s hidden and long-term consequences.<sup>136</sup>

For the reasons discussed herein and in the SOP attached hereto as **Exhibit B**, at 42-44, the terms of the A&R PPA are “prudent and in the public interest in light of the A&R PPA’s hidden and long-term consequences” as contemplated in HELCO I and HELCO II.

**D. Additional Benefits of the Project.**

For the reasons discussed in the SOP attached hereto as **Exhibit B**, at 44-52, the Project provides a host of additional non-GHG emissions related benefits, including the facilitation of green hydrogen efforts, the utilization of invasive species<sup>137</sup> that would otherwise be decomposing in landfills, the diversification of renewable energy generation on HELCO’s grid, and the stimulation of the local economy with the creation agricultural and forestry sector jobs.

**E. Hu Honua’s Conditions of Approval.**

As established in its testimonies, Hu Honua has committed and agreed to, as conditions of approval of the A&R PPA, the Project being (1) at least 30,000 MT carbon negative cumulatively over the 30-year term of the A&R PPA (no matter the level of actual dispatch), and (2) carbon negative by the year 2035 and each year thereafter until the end of the A&R PPA term.<sup>138</sup> In the event the annual GHG inventory shows that Hu Honua was not carbon negative for a given year from 2035 or cumulatively over the 30-year term, Hu Honua has financially committed to either (1) purchase sufficient carbon offsets to make the GHG inventory carbon negative, or (2) pay a monetary amount for the purpose of procuring sufficient carbon offsets to achieve a carbon

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<sup>136</sup> Order No. 37910, issued Aug. 11, 2021, at 32-33.

<sup>137</sup> Test. of Mr. Lee, ROH, Hrg. Day 2, Mar. 2, 2022, at 7:58:47-8:00:09 (the Project is capable of utilizing many different undesirable invasive tree species.).

<sup>138</sup> Hu-Honua T-1, filed Sept. 16, 2021, at 7, 27, and 29-31.

negative inventory.<sup>139</sup>

To ensure that these two conditions of approval are realized, Hu Honua clarifies its commitments and agrees to supplementary conditions of approval to enable the Commission to hold Hu Honua accountable and enforce its carbon negative commitments. These proposed conditions,<sup>140</sup> as mentioned at the Hearing and clarified during closing argument<sup>141</sup> and this Brief, are as follows:

- Hu Honua agrees to place \$100,000 (or in the alternative, a range of up to \$450,000 if the Commission believes a higher amount is more appropriate)<sup>142</sup> of “seed money”, which may include marketable liquid assets, into a reserve fund or escrow account in Year 1 which will remain in the account for the entire 30 year A&R PPA term (or in the alternative, a lesser term if the Commission believes a lesser period of time is more appropriate) to serve as cushion of available funds to ensure that its carbon negative commitments are met. If there is any carbon sequestration deficit in the annual reporting to the PUC, Hu Honua will also place additional funds into the account each year over the 30-year term to cover the deficit and purchase carbon offsets (approximately \$15/ton);<sup>143</sup>
- Hu Honua agrees to a condition requiring Hu Honua to provide a minimum of 3 prospective names of independent verifiers to the PUC, allow all parties to comment, then the PUC can approve which prospective names are qualified to perform the independent five-year verification, then Hu Honua will select the independent verifier from the PUC approved list;<sup>144</sup>
- Hu Honua agrees to a condition that within 60 months after a final, non-appealable approval order from the PUC, Hu Honua will provide documentation<sup>145</sup> to the PUC demonstrating that

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<sup>139</sup> Hu Honua T-1, filed Sept. 16, 2021, at 32-33.

<sup>140</sup> Assumes non-appealable PUC approval and the Project is placed into service (commercial operations).

<sup>141</sup> Hu Honua Closing Argument, ROH, Hrg. Day 5, Mar. 7, 2022, at 1:43:11-1:44:17.

<sup>142</sup> See Test. of Mr. Miyata, ROH, Hrg. Day 3, Mar. 3, 2022, at 00:38:08-00:38:24 (“Okay. There was no thought about trying to cover [in the reserve fund] the whole amount [30,000 MT carbon negative commitment] from the outset?”); *id.*, at 00:36:33-00:36:53 (“You were ... using \$15 [per] ton as a benchmark for the carbon reduction offset, is that correct?”); *id.*, at 00:36:53-00:36:56 (“Currently, that’s correct.”).

<sup>143</sup> See Test. of Mr. Lee, ROH, Hrg. Day 2, Mar. 2, 2022, at 07:31:57-07:33:40; 08:06:00-08:08:47; 08:17:45-08:18:26 (Mr. Lee testified to Hu Honua’s willingness to include a reserve account to ensure that there are sufficient funds to purchase carbon offsets); See Test. of Mr. Miyata, ROH, Hrg. Day 3, Mar. 3, 2022, at 00:26:08-00:28:24; 00:36:33-00:36:55 (Mr. Miyata testified to the potential amount that the reserve fund would include, including \$100,000 in “seed money”. In response to Chair Griffin’s question about the amount in “seed money” considered for the reserve fund “at the moment”, Mr. Miyata confirmed that the \$100,000 amount was “currently” the amount being considered.) This supp. condition clarifies Hu Honua’s commitment regarding the potential amount of the reserve fund.

<sup>144</sup> See Test. of Mr. Lee, ROH, Hrg. Day 2, Mar. 2, 2022, at 7:35:00-7:36:04 (Mr. Lee testified to the proposed process that Hu Honua is willing to follow to identify the independent third-party verifiers that would be submitted to the Commission.) This supp. condition clarifies Hu Honua’s commitment regarding the selection of independent verifiers; see also Test. of Dr. Weaver, ROH, Hrg. Day 2, Mar. 2, 2022, at 4:46:00-4:46:57.

<sup>145</sup> Test. of Mr. Lee, ROH, Hrg. Day 2, 2022 at 6:32:20-6:34:48 (As an example, Mr. Lee testified to Hu Honua’s discussions with a large landowner for 5,500 acres of commercial eucalyptus that may be added to Hu Honua’s current inventory.) The letter from Kamehameha Schools (“KS”), dated February 3, 2022, attached hereto as **Exhibit F**, shows that Hu Honua’s supplier has engaged in good faith discussions with KS for a license covering approximately 5,500 net acres of harvestable land with standing eucalyptus trees to be used by Hu Honua, evidencing

it has secured additional acreage on Hawaii Island to provide the feedstock for the remaining term of the A&R PPA;<sup>146</sup>

- Hu Honua agrees not to receive a preferential rate for any period of energy generation using out-of-state feedstock; rather, Hu Honua would only be able to recover the Avoided Cost Rate as published monthly by HELCO for such period assuming such rate is lower than the A&R PPA rate;<sup>147</sup>
- Hu Honua agrees to the recommended conditions within Hu Honua’s control described in Section II.F of the CA’s Prehearing Statement of Position;<sup>148</sup> and
- Hu Honua stipulates to ongoing review by the PUC for purposes of reviewing and enforcing Hu Honua’s carbon negative commitments and any other commitments proffered by Hu Honua in this proceeding. If Hu Honua fails to meet any commitments, it agrees to cure any shortcomings within a reasonable time period to ensure that Hu Honua’s commitments are met.<sup>149</sup>

In addition, Hu Honua agrees to adopt any reasonable modifications and/or additional conditions ordered by the Commission that will enable the Commission to hold Hu Honua accountable and enforce any commitments and conditions of approval. Hu Honua would like to ensure that the benefits of the Project and its carbon negative commitments will be realized.

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Hu Honua’s ability to secure additional acreage for the duration of the A&R PPA under this supp. condition.

<sup>146</sup> See Test. of Mr. Lee, ROH, Hrg. Day 2, Mar. 2, 2022, at 7:26:25-7:27:24; Test. of Mr. Miyata, ROH, Hrg. Day 3, Mar. 3, 2022, at 00:16:40-00:17:06; 00:03:45-00:04:21 (Mr. Lee and Mr. Miyata testified to Hu Honua’s preference to secure leases for the entire duration of the A&R PPA in the event Hu Honua obtained a final, non-appealable A&R PPA and confidence in extending its current leases and obtaining additional agreements for feedstock in the event Hu Honua obtained a final, non-appealable A&R PPA). This supp. condition clarifies Hu Honua’s commitment regarding obtaining feedstock for the remaining term of the A&R PPA.

<sup>147</sup> In CA/Hu Honua-SIR-48.a, filed Nov. 18, 2021, the CA asked Hu Honua its position on a possible condition that the Commission should only approve preferential rates if, *inter alia*: “there is any percentage of feedstock that is sourced from outside of Hawaii, a pro rata portion of the payment at preferential rates shall be returned to customers.” Hu Honua responded, in relevant part, that said condition “would be unfair to pay Hu Honua nothing, not even the market rate [(Avoided Cost Rate)], for energy generated from feedstock sourced outside of Hawaii.” In its closing argument and in this supp. condition, Hu Honua clarifies it agrees not to receive a preferential rate for any period of energy generation using out-of-state feedstock; rather, it would only be able to recover the Avoided Cost Rate (or market rate).

<sup>148</sup> The CA’s Prehearing Statement of Position, Section II.F, lists recommended conditions it suggested could be implemented in the event the A&R PPA is approved. See CA’s Errata to Its Statement of Position, filed Jan. 3, 2022, at pg. 45-46. Hu Honua agrees to these recommended conditions, except for one which is within HELCO’s control. See Test. of Mr. Lee, ROH, Hrg. Day 2, Mar. 2, 2022, at 7:20:29-7:20:37 (In response to Mr. Kaetsu’s questioning, Mr. Lee stated that “[a]s long as the condition is reasonable, [Hu Honua] certainly would want to look at that.”) In this sense, Mr. Lee testified to Hu Honua’s willingness to incorporate additional conditions in this proceeding. In its closing argument and in this supp. condition, Hu Honua clarifies its commitment to adopt the CA’s recommended conditions.

<sup>149</sup> Mr. Lee testified that Hu Honua would stipulate to ongoing review by the Commission for purposes of review and/or enforcing the carbon negative commitments. See Test. Of Mr. Lee, ROH, Hrg. Day 2, Mar. 2, 2022, at 7:50:28-7:51:06 (“[w]e would stipulate to [ongoing review by the Commission]”). This supp. condition clarifies Hu Honua’s commitment to stipulate to ongoing review by the PUC for purposes of reviewing and enforcing Hu Honua’s carbon negative commitments and any other commitments.

The Commission has the authority to review and enforce conditions of approval agreed to by Hu Honua, for example, using any combination of the below methods which the Commission has used in prior decisions:

1. The Commission can require HELCO to file annual reports containing information demonstrating Hu Honua is meeting the proposed conditions.<sup>150</sup> Hu Honua will work with HELCO to develop the annual reports, and Hu Honua will file on its own or provide to HELCO for the filing of any relevant, non-confidential, information necessary for the development of the annual reports; or
2. The Commission can require HELCO to file comprehensive plans demonstrating how Hu Honua will satisfy the proposed conditions.<sup>151</sup> Hu Honua will work with HELCO to develop the comprehensive plans, and Hu Honua will provide to HELCO any relevant, non-confidential, information reasonably necessary for the development of the comprehensive plans; or
3. The Commission can require HELCO and Hu Honua to amend the A&R PPA to include Hu Honua's agreement to the conditions of approval and HELCO's ability to enforce the same, and file a final Proposed Amended PPA to the Commission for approval.<sup>152</sup>

#### IV. CONCLUSION.

For the foregoing reasons, Hu Honua respectfully submits that the burden for approval has been met, and approval of the A&R PPA is appropriate.

DATED: Honolulu, Hawaii, March 29, 2022.



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<sup>150</sup> See, e.g., Docket No. 2011-0060, Decision and Order, issued June 15, 2011, at 26 (“MECO shall file a quarterly progress report with the commission...”). The Commission required MECO to file the quarterly progress report containing, *inter alia*: (1) progress and approval dates permits outlined in the Application; (2) acceptable Post-Project site restoration requirements; and (3) progress of project completion; and MECO would need to collaborate with the developer to document or complete those requirements.

<sup>151</sup> See, e.g., Docket No. 2020-0137, Decision and Order No. 37516, issued Dec. 30, 2020, at 40 (“[T]he Commission finds it reasonable and in the public interest to require Waiawa Phase 2 Solar to develop a comprehensive end of life management plan for project equipment during the 20-year contract term when the industry for recycling and other end-of-life programs has matured. More specifically, the end-of-life management plan should indicate whether batteries and PV panels will be repurposed, recycled, incinerated, or landfilled, the company that will be providing the service, and the cost of the service. Hawaiian Electric shall file the end-of-life management plan in this docket within five years of the date of this Order.”) (emphases added).

<sup>152</sup> See, e.g., Docket No. 2013-0202, Decision and Order No. 31993, issued Mar. 17, 2014, at 17-18 (“Upon execution, KIUC shall file with the commission, ... the final Proposed Amended PPA.”) (emphases added)

the means by which it might offer guarantees or commitments to ensure that the local community and Hawaii Electric Light customers will receive the purported benefits.

**F. CONDITIONS IF APPROVED.**

The Consumer Advocate is still assessing the Project and believes that it is premature to firmly recommend any conditions tied to approval of the Amended and Restated PPA. However, it notes potential conditions and guarantees discussed earlier in the proceedings:

- Rather than just suggesting that the Project could support the retirement of existing fossil fueled generation as a basis to approve the Amended and Restated PPA, Hawaii Electric Light should provide a commitment plan of accelerated unit retirements that will help realize the purported benefits while still safely, reliably, and cost-effectively provide utility services.
- Requiring the filing of a fuel/feedstock report by Hu Honua to evaluate whether there are any cost savings that should be passed to customers.
- Requiring the filing of direct benefits from the Hu Honua project, such as the number of jobs and payroll.
- Requiring the filing of reports to address assertions offered as benefit and justification for the preferential rate request, such as reporting on the total amount of locally sourced feedstock burned in each year, the revenues and benefits associated with the harvesting and use of the feedstock, the forestry management plan - including the total annual amount of replanted trees and jobs associated with the replanting, to assess whether the operations of Hu Honua is carbon neutral or

not, and Hu Honua's carbon sequestration plan. Such reporting could be used to cross-check any periodic information offered by Hu Honua in relation to its carbon neutrality commitment.

- Requiring the filing of reports on community outreach activities to provide timely information on efforts to address remaining community concerns.

### **III. RECOMMENDATION.**

Based upon the above, the Consumer Advocate hereby states that, at this time, due to remaining questions and concerns, it is unable to recommend approval of the proposed Project. However, the Consumer Advocate takes note of the fact that Hu Honua does represent a renewable energy project that intends to rely on locally produced agricultural biomass (and/or biofuels), at least primarily, which could provide benefits to the island of Hawaii's agricultural industry. There are, however, remaining questions about whether the benefits have been adequately supported to assess whether verifiable benefits might exceed the costs. Throughout the document, the Consumer Advocate has offered suggested areas where Hawaii Electric Light and/or Hu Honua could provide additional evidence or commitments that should facilitate the Commission's decision on this matter, and the Consumer Advocate intends to continue to assess the Project through the evidentiary hearing and is open to accounting for any additional evidence or commitments offered by the applicants.