

DIVISION OF CONSUMER ADVOCACY
Department of Commerce and
Consumer Affairs
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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
THE STATE OF HAWAII DEPARTMENT OF	)	DOCKET NO. 2014-0135
BUSINESS, ECONOMIC DEVELOPMENT,	)	
AND TOURISM	)	
	)	
For an Order Approving the Green	)	
<u>Infrastructure Loan Program.</u>	)	

DIVISION OF CONSUMER ADVOCACY'S
STATEMENT OF POSITION ON PROGRAM NOTIFICATION NO. 15

Pursuant to Order No. 38584 Establishing The Procedural Schedule To Review Program Notification No. 15, filed on August 30, 2022 ("Order No. 38584"), the Division of Consumer Advocacy ("Consumer Advocate") informs the Hawaii Public Utilities Commission ("Commission") that it has completed its review of Program Notification No. 15 for the Green Infrastructure Loan Program ("GEMS Program"), filed by the Hawaii Green Infrastructure Authority ("HGIA") on August 12, 2022 ("PN 15"). Based upon that review, the Consumer Advocate recommends that:

- HGIA's proposed changes to the Green Energy Money Saver ("GEM\$") On-Bill Program (GEM\$ Program) eligibility and savings requirements should not be approved at this time.
- The reporting of certain metrics may be discontinued but consideration should be given as to whether alternatives might provide further transparency regarding program operation.
- Further information should be provided in support of HGIA's request to use the GEM\$ On-Bill Program to finance Community Based Renewable Energy ("CBRE") projects, including whether and how HGIA would evaluate and ensure that a CBRE project receiving GEMS financing would be cost-effective for all consumers and result in net benefits to both subscribers and non-subscribers.
- Further information should be provided in support of HGIA's request to use the GEM\$ On-Bill Program for projects that are not financed by GEMS. Consideration should be given as to whether it is more efficient for the Hawaiian Electric Companies¹ to act as the payment servicer in such instances.
- Further information should be provided in support of HGIA's request to include non-utility expense savings when determining energy savings to establish how assumptions regarding transportation costs, energy costs, and any other non-utility costs, will be reliably estimated so that the intended

¹ The "Hawaiian Electric Companies" or "Companies" are Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited.

participants will see overall savings and all customers' interests are not adversely affected.

- Bundling Commission-approved energy improvements may be allowed to the extent that the bundled improvements will still meet the minimum bill savings requirement of ten percent or, if the Commission approves an expansion of eligibility requirements, the modified minimum bill savings requirement.
- Changes to the items proposed in PN 15 should be proposed through the Program Notification and/or Modification Process and not through the Annual Plan.

The basis for the Consumer Advocate's recommendation is discussed below.

I. BACKGROUND.

A. PROCEDURAL BACKGROUND.

On August 12, 2022, HGIA filed PN 15.

On August 30, 2022, the Commission filed Order No. 38584.

On August 31, 2022, Ms. Susan Wiener filed a public comment.

On September 12, 2022, the Commission filed IRs on HGIA. HGIA responded on September 23, 2022.

On September 16, 2022, the Consumer Advocate filed IRs on HGIA. HGIA responded on September 30, 2022, and on October 7, 2022.

On November 18, 2022, the Commission filed IRs on HGIA. HGIA responded on November 29, 2022.

The Commission held a Technical Conference on December 5, 2022 (“Technical Conference”). On that same day, HGIA filed the slides it presented at the Technical Conference (“HGIA Technical Conference Presentation”). On December 6, 2022, the Hawaiian Electric Companies filed the slides from its presentation at the Technical Conference (“Companies Technical Conference Presentation”).

B. SUMMARY OF PROGRAM NOTIFICATION NO. 15.

HGIA states that

The purpose of this Program Notification is to provide additional information and request approval to modify and further enhance the Hawaii Green Infrastructure Authority’s Green Energy Money Saver (“GEM\$”) On-Bill Program.²

HGIA requests that several modifications be made to the GEM\$ On-Bill Program such that:

- Customers with disconnection notices would be eligible for the program based on a tiered minimum savings requirement.
- The bill savings requirement be changed to a reduction in energy costs requirement based on kWh production/reduction.
- The reporting requirements be amended to discontinue the reporting of several metrics including those for marketing and customer service activities, the number of participants by credit score and income distribution, the number of commercial participants by gross receipts and average

² PN 15, at 3.

number of employees, and certain system and project cost and size information.

- The GEM\$ On-Bill Program be used to finance community solar projects.
- The GEM\$ On-Bill Program repayment mechanism be used for projects that are not financed by GEMS.
- Non-utility savings be used in the savings calculation to allow solar systems to be sized for additional EV charging load.
- Energy efficiency and/or renewable energy retrofits be bundled to meet the savings requirement.

HGIA further states that any subsequent changes to the details described in PN15 will be proposed through the GEMS Annual Plan.³

On August 31, 2022, Ms. Susan Wiener filed a public comment in support of the changes requested under Program Notification No. 15.

II. DISCUSSION.

A. HGIA'S PROPOSED CHANGES TO GEM\$ ON-BILL ELIGIBILITY AND SAVINGS REQUIREMENTS SHOULD NOT BE APPROVED AT THIS TIME.

Under the terms of the GEM\$ On-Bill Program, applicants are currently eligible to participate in the program if, among other requirements, they have not received a disconnection notice within the past twelve months.⁴ In response to CA/HGIA-IR-3.b,

³ PN 15, at 23.

⁴ See Hawaii Green Infrastructure Authority's and Hawaiian Electric Companies' Joint Filing for Final Approval of the Green Energy Money Saver On-Bill Program, filed on August 20, 2018 ("Joint Filing"), at 16. If the customer has been a utility customer for at least six months but less than twelve months, this period is adjusted to reflect the period since utility account inception. The

HGIA indicates approximately 40% of completed applications were denied due to disconnection notices for the period June 1, 2018, through February 28, 2020.⁵ Based on the data provided in response to CA/HGIA-IR-3.c, however, it appears that the percentage of completed applications denied due to disconnection notices for applications received between July 1, 2021, and June 30, 2022 is much lower (3.8%)⁶. In addressing this difference, HGIA states that:

Contractors have become skilled at screening applicants for both interest in installing solar systems as well as the receipt of disconnection notices as both the number and percentages of withdrawn/expired applications as well as applicants disconnection notices significantly decreased... the data provided... is not a true indication of the number and percentage of [low- and moderate- income ("LMI")] rate payers who may have received disconnection notices.⁷

HGIA proposes that all ratepayers, including those with disconnection notices, be allowed to access GEM\$ On-Bill Program financing with the following minimum savings requirements:

HGIA Proposed Eligibility Requirements

No. of Disconnection Notices	Tiered Estimated Savings Requirement
0	Budget Neutral: no savings required
1-4	Minimum 10% savings
5+	Minimum 15% savings

on-bill repayment mechanism was approved as part of Order No. 35918 Approving the Establishment and Implementation of an On-Bill Repayment Mechanism and Associated Tariff, filed on December 6, 2018 ("Order No. 35918").

⁵ HGIA notes that the 70% referenced in PN 15 did not refer to the percentage of completed applications that were denied due to disconnection notices but instead represents the proportion of total denials due to disconnection notices in that period.

⁶ The total number of applications with disconnection notices appears to be 11 (7+4). The total number of completed applications is 291. Eleven divided by 291 is 3.8%.

⁷ Response to CA/HGIA-IR-3.c.

HGIA states that:

Modifying the GEM\$ eligibility requirement to allow all ratepayers to participate will expand access to financing for underserved ratepayers who are not able to qualify for conventional bank and credit union financing. Additionally, by instituting a tiered estimated post-installation savings...a higher net savings requirement [would be required] for those households struggling to pay their utility and other household expenses.⁸

HGIA further requests that instead of the minimum savings requirement being based on the participant's bill savings,⁹ that it be based on the "kWh produced or reduced".¹⁰ Specifically, HGIA notes that customers with large energy bills, as may be the case for LMI customers with multiple generations or families living in the same household, would find it more difficult to finance certain Commission-approved products as the savings would be spread over a larger bill. Based on the example provided by HGIA at page 9 of PN 15, HGIA is seeking to calculate the minimum savings requirement based on the percent of energy savings associated with the product being financed (in the example, a solar hot water heater) as opposed to the percent of bill savings that would result following the investment.

The Consumer Advocate is very concerned about the struggles faced by Hawaii's utility consumers, especially low income customers.¹¹ The Consumer Advocate strongly advocated for the temporary suspension of the authority of regulated utilities, including

⁸ PN 15, at 7-8.

⁹ Joint Filing, at 18.

¹⁰ PN 15, at 9.

¹¹ See, for example, ALICE in Hawaii: 2022 Facts and Figures, November 2022, indicating an increase in the number of households below the poverty line (from 9% in 2018 to 15% in 2022), an increase in the number of households below the ALICE Threshold (from 42% in 2018 to 44% in 2022), and that 46% of households below the ALICE Threshold are unable to pay their bills on time. <https://www.boh.com/siteassets/files/community/alice-report-2022.pdf>

the Hawaiian Electric Companies, to terminate or disconnect utility service or unreasonably assess charges on customers during the COVID-19 pandemic, in addition to additional consumer protections such as requiring utilities to conduct outreach regarding payment plans and ahead of the termination of the moratorium on disconnections and allowing customers to pay back balances over extended periods.¹² The Consumer Advocate continues to be very concerned regarding the energy burden that customers, especially LMI customers, are facing given events such as the increase in fuel costs due to the ongoing conflict in the Ukraine, increased costs due to inflation, the closure of the AES coal plant, and the delays, increased pricing, and, in some cases, termination of, several solar plus battery energy storage projects resulting from the Hawaiian Electric Companies' Stage 1 and Stage 2 Request For Proposals process.¹³

While the Consumer Advocate recognizes that the eligibility requirement modifications proposed by HGIA would allow for greater participation in the GEM\$ On-Bill Program, the Consumer Advocate is concerned about the impacts these modifications may have on participants' ability to pay their bills, and on the overall costs of the program. The Consumer Advocate notes that the minimum bill savings of at least ten percent was cited as a mitigating factor in allaying concerns that participants that utilized the GEM\$

¹² Letter from D. Nishina to Commission re: Commission Investigation to Address COVID-19 Impacts on Consumers and Regulated Companies, dated April 23, 2020. See also Letter from D. Nishina to Commission re: Commission Investigation to Address COVID-19 Impacts on Consumers and Regulated Companies - Order No. 37284 Extending Suspension Of Termination Or Disconnection Of Regulated Utility Services Due To Non-Payment And/Or Assessment Of Other Charges Through December 31, 2020, dated August 25, 2020. <https://puc.hawaii.gov/covid19/>

¹³ See, for example, the November 2022 Monthly Update filed by the Hawaiian Electric Companies on November 23, 2022, in Docket No. 2021-0024, illustrating the current status of the Stage 1 and Stage 2 RFP projects. The Stage 1 and Stage 2 RFPs (and Stage 3 RFPs) are the subject of Docket No. 2017-0352.

program would be able to repay their bills. In Order No. 35185 Providing Guidance Regarding the On-Bill Repayment Mechanism, the Commission stated:

Importantly, the GEM\$ program will require at least a ten percent bill savings, and decreasing a customer's bill should decrease the risk of disconnection for non-payment.¹⁴

In prior comments, the Consumer Advocate emphasized the importance of ensuring that projects eligible for GEM\$ on-bill financing would be those that are expected to result in *immediate and consistent estimated bill savings of at least ten percent.* (emphasis added)¹⁵

During the Technical Conference, the Hawaiian Electric Companies presented information regarding GEM\$ On-Bill customers in arrears.¹⁶ The Consumer Advocate has subsequently compiled information based on the residential loan delinquencies reported in the Green Energy Market Securitization Program ("GEMS") Quarterly Annual reports, as shown below. The Consumer Advocate notes that even with the current eligibility requirements in place, the GEMS Program has experienced loan delinquencies over time, with the number and percent of delinquent¹⁷ residential loans increasing during the period in which disconnections were suspended and appearing to generally remain high.¹⁸

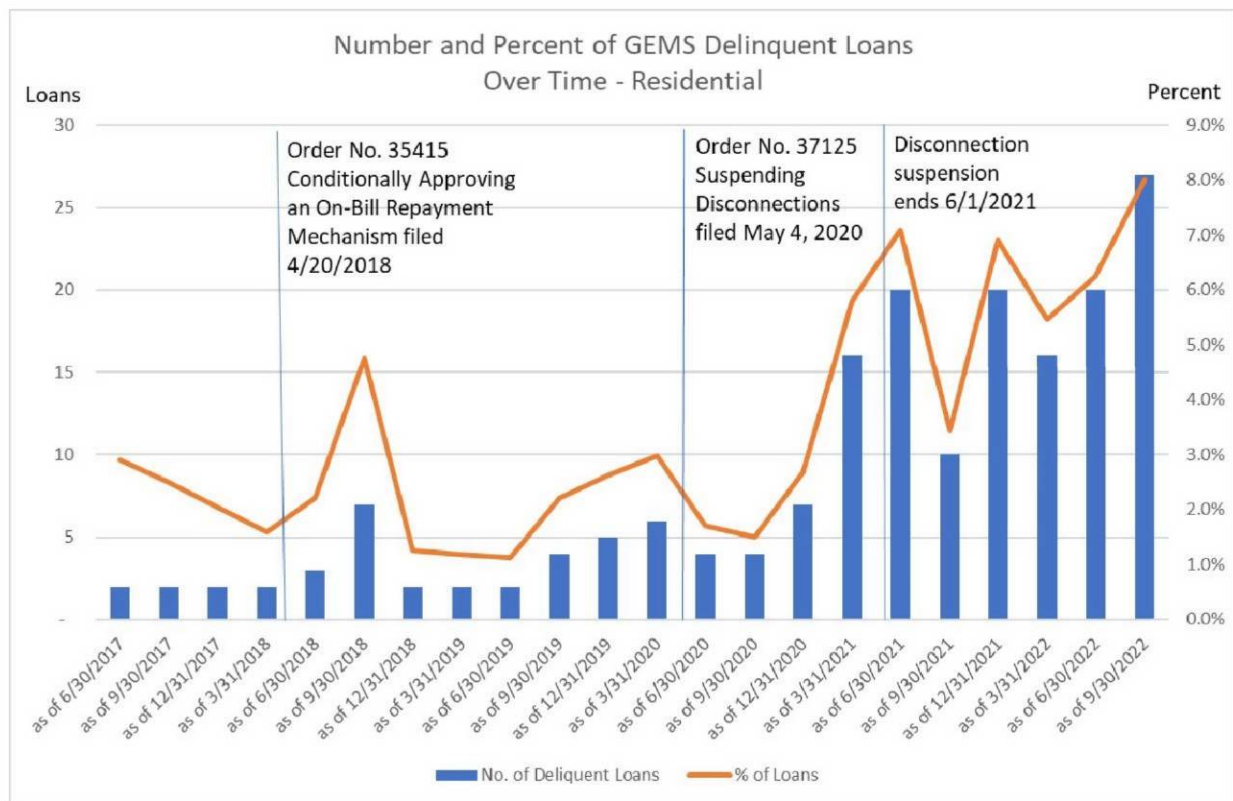
¹⁴ See Order No. 35185 Providing Guidance Regarding the On-Bill Repayment Mechanism, filed on January 5, 2018 ("Order No. 35185"), at 8.

¹⁵ Division of Consumer Advocacy's Comments Regarding Hawaii Green Infrastructure Authority's and Hawaiian Electric Companies' Joint Filing for Approval of the Green Energy Money Saver Bill Program, filed on March 29, 2018 ("CA Comments on GEM\$ Program"), at 15-16.

¹⁶ Companies Technical Conference Presentation, slides 3-4.

¹⁷ A loan is counted as delinquent if it is more than 30 days past due. The percent of delinquent loans is equal to the number of delinquent residential loans divided by the total number of residential loans, as of the end of the reporting period.

¹⁸ The Consumer Advocate did not include loans were counted as delinquent due to an HGIA Loan Originator error (GEMS Program Quarterly Report: April 1, 2017 – June 30, 2017) or that were



Source: GEMS Program Quarterly Reports, filed July 31, 2017, through October 31, 2022.

HGIA reports that its Allowance for Loan Losses was \$146,963 as of March 31, 2022; \$146,940 as of June 30, 2022; and \$147,232 as of September 30, 2022.¹⁹

HGIA previously noted, in its GEMS Program Quarterly Report for the period July 1, 2018 to September 30, 2018, filed October 31, 2018, that:

With a program objective of providing access to financing to the low-income and/or low-credit score demographics, loan delinquencies are to be expected. Of the six loans past due more than 91 days, all six borrowers are considered low and moderate-income households. Five of the borrowers have credit scores less than 700 and the one borrower with a

identified as delinquent due to the timing of the utility billing cycle or an input error (GEMS Program Quarterly Report: July 1, 2021 to September 30, 2021).

¹⁹ See GEMS Program Quarterly Report: January 1, 2022 - March 31, 2022, at 8; GEMS Program Quarterly Report: April 1, 2022 – June 30, 2022, at 9; and GEMS Program Quarterly Report: July 1, 2022 – September 30, 2022, at 9.

credit score in excess of 700, has a household income of <40% area median income (considered very low income).²⁰

Although the Consumer Advocate recognizes HGIA's intent to expand program participation by relaxing applicant eligibility and minimum bill savings requirements, the Consumer Advocate is concerned about the possible impacts on the intended beneficiaries. As noted above, the proposed change appears likely to increase the likelihood that participants may not be able to pay their bills – for the financed system and/or the base utility bill. Such an outcome would result in further delinquent loan payments and raising the likelihood of disconnection for those participants. This outcome would put the intended beneficiaries in potentially greater dire financial conditions with respect to larger outstanding balances as well as negatively affecting their credit scores. In addition, if there are greater levels of disconnections, this is likely to increase the overall costs of the program.²¹ The Consumer Advocate notes that this risk is compounded should the Commission approve both of HGIA's proposed eligibility requirements, as doing so may allow customers with multiple disconnection notices to undertake

²⁰ GEMS Program Quarterly Report: July 1, 2018 – September 30, 2018, filed on October 31, 2018, at 7. HGIA subsequently brought all collection duties and responsibilities in-house and was able to reduce delinquencies. HGIA reported in the following quarter that “The property for the last remaining seriously delinquent loan is currently in escrow. The escrow officer has indicated that she expects the sale to close on January 31, 2019, at which time, our loan will be paid in full.” HGIA GEMS Program Quarterly Report: October 1, 2018 – December 31, 2018, filed January 30, 2019, at 7.

²¹ HGIA stated in response to CA/HGIA-IR-3.h that it is not able to quantify the impact of proposed change in disconnection notice criteria on past due rates, loan losses, and the overall cost of the GEM\$ Program. HGIA also stated in response to CA/HGIA-IR-5.c that it did not have the ability to quantify the impact of basing the percent savings requirement on the kWh produced or reduced instead of on bill savings. HGIA stated that “one would logically assume that there should be a positive impact on repayment, all other things being equal, if a future expense is less than current expenses.”

investments expected to have modest energy impacts²² that may not, in the end, result in actual bill savings. That is, focusing on energy savings instead of bill savings shifts attention away from whether the intended beneficiaries would be able to afford meeting the payments both to repay the loan and the utility bill. As the Commission is aware, due to the recent significant price increases, a customers' energy usage could be static or even decrease but their utility bill increased. Thus, again, this would, in turn, increase the likelihood that a greater percentage of loans may be delinquent, to the detriment of those participants, as well as raise the costs of the program, to the detriment of all ratepayers. While the Consumer Advocate acknowledges the potential benefits of expanded eligibility, the Consumer Advocate believes that the increased exposure to adverse effects to both participants and general customers have not been adequately mitigated. As a result, the Consumer Advocate does not support HGIA's proposed modifications to the GEM\$ Program eligibility requirements.

To the extent that the Commission is inclined to expand eligibility for the GEM\$ Program as is proposed, the Consumer Advocate recommends that the Commission require HGIA to explain how the intended beneficiaries would be protected against possible adverse credit impacts if further delinquencies or non-payment may occur under the relaxed eligibility requirements. Further, the Consumer Advocate recommends that the Commission must retain the minimum bill savings requirement but offers that the Commission may consider larger minimum bill savings requirements for participants with disconnection notices. For example, following HGIA's tiered structure:

²² HGIA confirmed, for example, if both of its requested modifications to eligibility requirements were adopted, that Family A on slide 13 of HGIA's Technical Conference slides would be eligible regardless of how many notices of disconnection the participant had received.

No. of Disconnection Notices	Tiered Estimated Savings Requirement
0	Minimum 10% bill savings
1-4	Minimum 15% bill savings
5+	Minimum 20% bill savings

Doing so would expand eligibility for GEMS financing while continuing to require that the energy improvements financed are likely to result in lower bills for participants, decreasing the risk for participant loan delinquencies, further damaging the credit scores for the participants, disconnection, and default.

B. THE REPORTING OF CERTAIN METRICS MAY BE DISCONTINUED BUT CONSIDERATION SHOULD BE GIVEN AS TO WHETHER MORE “MEANINGFUL” ALTERNATIVES CAN PROVIDE FURTHER TRANSPARENCY REGARDING PROGRAM OPERATION.

HGIA requests to eliminate reporting metrics in the following categories: marketing and customer service activities, the distribution of customers by credit score, the distribution of customers by household income, the distribution of small business customers (by gross receipts and average number of employees), and certain cost and system size information.

- 1. Certain Marketing and Customer Service Activities metrics: Prospective Contractor Contacts, Prospective Residential Loan Contacts, Prospective Consumer Lease Contacts, Prospective Commercial Loan Contacts, Existing Contractor Calls and Support, Existing Residential Participant/Borrower Servicing, and Existing Commercial Participant/Borrower Servicing.**

HGIA states that the intent of the marketing metrics were to demonstrate that HGIA is actively marketing the financing program but that “in reality, it is impossible for staff to keep track of every single contractor, residential and commercial applicant, and existing

servicing contacts made on a daily basis.”²³ HGIA states that will continue to report on the number of new applications received as well as the number of loans in process and funded but is requesting to remove the “contact” metrics from the quarterly report.

The Consumer Advocate agrees that HGIA should not be required to report “unmeaningful metrics”,²⁴ but contends that HGIA should not have represented that it would report such metrics²⁵ if the intention was to comply by using formulaic assumptions that are not representative of its marketing and customer service activities. Given HGIA’s representations, the Consumer Advocate does not oppose HGIA’s request to remove the requested “contact” metrics from its quarterly reporting but recommends that HGIA discuss in its Reply Statement of Position (“SOP”) whether there are alternative metrics that would better represent HGIA’s marketing efforts and would also be reasonable for HGIA to report. HGIA confirmed in response to CA/HGIA-IR-6 that it will continue to report metrics regarding its GEM\$ Marketing and Program Outreach Events and Activities, Contractor Complaint Resolution, and Participant/Customer Complaint Resolution.

2. Profile of Customers Financed: Number of Customers by Customer FICO Credit Score.

HGIA states that since the GEM\$ program launched, HGIA no longer pulls credit reports to underwrite loans. In response to CA/HGIA-IR-7.b, HGIA further states:

²³ PN 15, at 10.

²⁴ HGIA Presentation, slide 16.

²⁵ Hawaii Green Infrastructure Authority’s and the Hawaiian Electric Companies’ Responses to the Division of Consumer Advocacy’s Comments Regarding the Joint Filing for Approval of the Green Energy Money Saver On-Bill Program, filed on April 13, 2018, at 8-10.

While there is a nominal monthly subscription fee HGIA is required to pay the credit reporting agency for the ability to pull credit reports, the real “cost” of the PUC requiring HGIA to pull credit reports for GEM\$ applications will be borne by the LMI applicants. Credit inquiries on applicants applying for loans have a negative impact of [further] lowering the credit score of the underserved ratepayer, which could increase the cost of non-GEM\$ related borrowings.

The Consumer Advocate notes that the reporting of credit scores was originally included to demonstrate that GEMS financing was reaching the intended underserved markets.²⁶ While the Consumer Advocate believes that data on participants’ credit scores continues to be a useful and meaningful metric to help assess the impact of the GEMS program, the Consumer Advocate acknowledges HGIA’s representations that collecting such information might adversely impact participants. As such, the Consumer Advocate does not oppose this request. The Consumer Advocate believes that historical information regarding the distribution of credit scores should continue to be reported to provide program transparency. To the extent that HGIA is no longer collecting credit reports, the Consumer Advocate believes it is appropriate for HGIA to either indicate that the information is not applicable since the date of the GEM\$ program launch as HGIA no longer obtains this credit information.

3. Number of Customers by Income Distribution.

HGIA states that reporting the household income without also reporting the number of household members can be misleading, and that many GEMS applicants have household incomes exceeding \$100,000 but also support large number of household

²⁶ See Application of The State of Hawaii Department of Business, Economic Development, and Tourism, filed on June 6, 2014, Exhibit 6, section “Residents with Low to Moderate Credit are Underserved”.

members. HGIA states that it continues to report program participation based on the U.S. Department of Housing and Urban Development's Area Median Income ("AMI") as a more "meaningful" measure of LMI household participation.²⁷

The Consumer Advocate agrees that supplementing household income information with the number of household members would more accurately reflect whether a household should be considered LMI. While the Consumer Advocate would support more detailed reporting that reflects both household income and household size, as it provides greater transparency than AMI percentages and is more meaningful, HGIA has indicated that it would not consider such reporting due to its resource constraints.²⁸ Given that HGIA will continue to report program participation based on the U.S. Department of Housing and Urban Development's AMI percentages, the Consumer Advocate does not oppose this request.

4. Number of Small Businesses by Gross Receipts and Number of Small Businesses by Average Number of Employees.

HGIA states that to be eligible for GEMS financing, a business must meet the U.S. Small Business Administration ("SBA") business size standards, which are based gross revenue and number of employees, depending on the industry. HGIA states that reporting gross receipts and number of employees without this context provides little meaning and requests to remove these metrics.

²⁷ PN 15, at 11.

²⁸ Response to CA/HGIA-IR-8.b.

The Consumer Advocate notes that there is considerable variation in the revenue and employment thresholds for what is considered a small business.²⁹ That said, the Consumer Advocate believes that the reporting of revenues and employment characteristics provides at least some transparency regarding the characteristics of the businesses receiving GEMS financing rather than simply indicating that the loans were made to “Small Businesses” as defined by the SBA. As such the Consumer Advocate sought information on whether alternative metrics had been considered to provide more meaningful data on the characteristics of the commercial customers receiving GEMS financing. In response to CA/HGIA-IR-9, HGIA states that no alternative metrics were considered. At this time, the Consumer Advocate is unaware of an alternative measure that may be cost-effectively adopted to help provide transparency as well as greater certainty that the loans are consistent with the original intent. Thus, the Consumer Advocate will not object to the termination of this particular reporting requirement, but the Consumer Advocate reserves the right to revisit the need for this or a similar metric if future circumstances justify the need.

5. Cost Savings Impact.

HGIA requests to discontinue reporting “Average System Cost per Watt for Underserved Customers”, “Average System Size for Underserved Customers” and all averages “Since Program Inception” from the quarterly report. HGIA states that:

At its inception, the Authority believed that the distinction between all consumers financed and underserved customers financed was to determine if there was a disparity between these two groups. However, as

²⁹ See <https://www.sba.gov/document/support-table-size-standards>

GEMS funds can only be used to finance underserved ratepayers, there is no difference in the data being reported in both categories.

...On June 1, 2018, HGIA began accepting applications under the GEM\$ On-Bill financing program. As the portfolio becomes larger, it becomes increasingly more difficult and time consuming to accurately report the average system cost and size since program inception. As reporting average for the most current quarter as well as the current fiscal year are manageable and the Authority will continue to report those averages, HGIA is requesting to remove the Average System Cost per Watt for Underserved Consumers, Average System Size for Underserved Consumers, and all averages "Since Program Inception" from the quarterly report.³⁰

The Consumer Advocate notes that while the GEMS program is not restricted to providing financing to underserved customers, HGIA committed to allocate, as of September 1, 2019, a large proportion of the remaining GEMS financing to underserved customers including LMI single family homeowners and renters as well as non-profit organizations. These two categories are consistent with the "two critical underserved markets" that were identified in the development of the GEMS Program.³¹ While HGIA acknowledges that small businesses were not classified as "underserved" in Decision and Order No. 32318, HGIA states that "HGIA defines the underserved ratepayers that are eligible for GEMS financing as LMI homeowners and renters, small businesses, as defined by the U.S. Small Business Administration, multi-family rental projects and non profits."³² While HGIA states that it is not seeking Commission approval to expand the Commission's definition of underserved to small businesses and multi-family rental projects at this time, HGIA underscores the use of its definition, as opposed to the

³⁰ PN 15, at 13-14.

³¹ See Decision and Order No. 32318, filed on September 30, 2018 ("Decision and Order No. 32318"), footnote 18.

³² Response to CA/HGIA-IR-10.a.

definition of underserved in Decision and Order No. 32318, in its Technical Conference Presentation.³³

The Consumer Advocate contends that there should not be two definitions of “underserved” as it pertains to the GEMS Program, and strongly recommends that reporting should follow the definition of underserved markets that was identified in the GEMS Application and Decision and Order No. 32318, to mitigate confusion, and especially as HGIA has not sought Commission approval to expand the definition.³⁴ As noted in prior comments, the Consumer Advocate expressed concern with including small businesses and multi-family rental projects as part of the underserved market unless additional criteria were provided to establish why or under what conditions those participants would be classified as underserved. In particular, as it pertains to for-profit multi-family rental projects, the Consumer Advocate notes that their inclusion as Eligible

³³ HGIA Technical Conference Presentation, slide 5.

³⁴ In Program Notification No. 3, filed on April 8, 2015, at pages 4-5, HGIA stated:

Though small businesses were not named as underserved, DBEDT notes here that financing available to small businesses is limited because small businesses lack investment-grade ratings, which investors use to determine eligibility for financing. As a result, traditional underwriting criteria requiring investment-grade ratings hinder the ability of small businesses to access financing. Though DBEDT does not intend to add small businesses to the critical underserved groups as identified in the Application or modify the metrics for “underserved” through this notification, as this notification serves to provide information about the GEMS Program as approved, DBEDT may choose to address the classification through other docket-related filings in the future.

In a letter to the Commission, filed September 14, 2016, regarding Program Notification No. 9, HGIA stated:

HGIA has not yet determined if it will designate small business customers and for-profit apartment building owners as part of the underserved segment. If it decides to do so in the future, it will provide in its upcoming (or future) quarterly reports discussions establishing why or under what circumstances these entities should be considered underserved.

Participants and Eligible Borrowers does not mean that HGIA is loaning funds to renters – it is loaning funds to project developers or property owners, the benefits of which may or may not be passed through to customers.³⁵

As it pertains to HGIA's specific request to eliminate the "Average System Cost per Watt for Underserved Customers, Average System Size for Underserved Customers" cost savings metrics, the Consumer Advocate does not oppose this request given that HGIA indicated at the Technical Conference that it is only providing financing to LMI households.³⁶ The Consumer Advocate recommends that HGIA provide a certification at the end of each year that only LMI households has received financing and HGIA should confirm that it will continue providing information on the Average System Cost per Watt for All Customers and Average System Size for All Customers.³⁷

³⁵ See Letter From: Consumer Advocate To: Commission Re: Docket No. 2014-0135 - In the Matter of the Application of The State of Hawaii Department of Business, Economic Development, and Tourism For an Order Approving the Green Infrastructure Loan Program - Program Notification No. 9, filed on September 6, 2016 ("CA Comments on PN 9"), at 5-6, and Letter From: Consumer Advocate To: Commission Re: Docket No. 2014-0135 - In the Matter of the Application of The State of Hawaii Department of Business, Economic Development, and Tourism For an Order Approving the Green Infrastructure Loan Program - Program Notification No. 12, filed March 22, 2018 ("CA Comments on PN 12"), at 4-5. The Consumer Advocate stated that "the extent to which renters benefit from these installations depends on a variety of factors including how utility bills are assessed and paid (e.g., do the renters pay the electricity bill directly or are electricity expenses combined with other charges as part of a maintenance fee), the competitiveness of the rental housing market, and the nature of the rental project." [footnotes omitted]

The Commission stated, in Order No. 35375 Conditionally Approving Program Notification No. 12, filed on April 2, 2018 ("Order No. 35375"), that "the Authority must clearly articulate valid and reasonable criteria for an underserved designation, before designating any loan or project issued under PN 12 as serving the underserved. In developing such criteria, including determining what data and documentation is necessary, the commission urges the Authority to collaborate with other interested stakeholders, especially the Consumer Advocate." Order No. 35375, at 5-6.

³⁶ In other words, the Average System Cost per Watt for All Customers and Average System Size for All Customers metrics should not be mixing system cost and size estimates for loans being made to LMI households with those associated with loans going to multi-family rentals or small businesses.

³⁷ While this was confirmed in response to CA/HGIA-IR-10.c, it appears that all Cost Savings Impact metrics were included as part of the response to PUC-HGIA-IR-124, Attachment A.

Regarding the elimination of all averages “Since Program Inception” reported under the Cost Savings Impact, the Consumer Advocate notes that this can provide an approximation of how system costs and/or sizes have changed but also recognizes the challenges HGIA appears to be facing with applications are currently housed within three different workbooks/portals. HGIA states that it “would like to migrate all of the data on excel spreadsheets into a cloud-based solution, however... the Authority is currently resource constrained.”³⁸ Given this, and that the underlying data is available through the Quarterly Reports, the Consumer Advocate does not oppose this request.

C. HGIA HAS NOT SUFFICIENTLY SUPPORTED ITS REQUEST FOR THE USE OF THE GEM\$ ON-BILL PROGRAM TO FINANCE COMMUNITY SOLAR PROJECTS.

HGIA stated in PN 15 that it is seeking approval to use the GEM\$ On-Bill Program to finance CBRE projects. HGIA states that it received a request from a CBRE project seeking both GEMS financing and the utilization of the GEM\$ repayment mechanism, and subsequently approved reserving \$7.5 million for the Ho`ahu Energy Cooperative Molokai (“Ho`ahu”) CBRE project, subject to Commission approval and formal HGIA loan approval. HGIA states that while commercial lenders usually rely on the historical track-record of a business to ensure that it can repay a requested loan, lenders may require additional collateral or personal guarantees of a company’s principals for new ventures and/or growing companies. As Ho`ahu is a new organization and does not have additional assets or principals, HGIA asserts that “GEMS subordinate financing, coupled

³⁸ Response to CA/HGIA-IR-10.b.

with the use of the GEM\$ on-bill repayment mechanism, are critical for Ho`ahu to attract and leverage much needed private capital to develop the project.”

HGIA states that if the Commission approves GEMS financing for such community solar projects, the loans will be structured similar to other GEMS financed commercial projects which leverage private capital in the form of equity and/or conventional debt.³⁹ HGIA indicates that once the CBRE project is placed in service and the CBRE credits are placed on the CBRE Subscriber’s utility bill, HGIA will place the Subscriber’s CBRE payment (whether monthly subscription or loan repayment) as a Program Charge on the Subscriber’s utility bill. HGIA states that it will apply the loan payment due from the CBRE project against the Program Charges collected and the excess, net of a nominal servicing fee, will be transmitted to the CBRE project. HGIA states that it has received inquiries from five additional community solar projects to date and expects that while some projects may replicate a “Ho`ahu Coop” model, others may be able to obtain most of their financing “without much GEMS loan capital if the project’s off-takers are considered to be “low-risk”.⁴⁰ HGIA notes that a commercial lender indicated that the ability of a CBRE project with LMI and other undeserved subscribers to utilize the GEM\$ on-bill repayment mechanism would help mitigate the credit risks otherwise associated with the project.

HGIA states that it preliminarily discussed with the Hawaiian Electric Companies the changes that would be necessary to utilize the CBRE online portal to include HGIA’s

³⁹ In response to CA/HGIA-IR-11, HGIA states that it “anticipates CBRE project financing to mirror the GEMS Commercial PV Loan product: Project Sponsor in Program Notification No. 9 with a capital stack consisting of private capital and GEMS capital. The only difference is instead of one participant purchasing energy from the solar project, a number of participants will be purchasing energy from the CBRE project” [footnote omitted]

⁴⁰ PN 15, at 18.

on-bill repayment mechanism to collect payments from Subscribers that are based on the actual kWh produced. HGIA states that if it cannot receive such payments on a “real time” monthly basis, it would need to incorporate a “reserve” into its Program Charge, similar to an escrow account for real property taxes, to be reconciled on an annual basis.⁴¹ Finally, HGIA states that, as it would be “costly and confusing” for the CBRE developer to maintain a servicing process for underserved ratepayers serviced by HGIA and a servicing process for those who do not meet HGIA’s underserved definition, it is requesting approval to for HGIA to service all subscribers of a CBRE developer, regardless of income or size.⁴²

The Consumer Advocate continues to support the CBRE program as a way to allow, traditionally undeserved customers, including residential and commercial renters, those limited by rooftop space (i.e., multi-dwelling units and high-rise condos, or unsuitable roofs), and low-income customers, to access the benefits of renewable generation. The Consumer Advocate also recognizes the challenges that the CBRE program has encountered over time. While the Consumer Advocate is generally supportive of solutions that facilitate the development of cost-effective CBRE projects that benefit all ratepayers, including LMI customers, the Consumer Advocate believes that HGIA has not provided sufficient information regarding its request to provide GEMS financing to potential developers of CBRE projects.

As a starting point, the Consumer Advocate notes that HGIA states in response to CA/HGIA-IR-12.a that it is seeking to expand GEMS financing for utility-scale CBRE

⁴¹ PN 15, at 19.

⁴² PN 15, at 20.

projects.⁴³ Pursuant to Decision and Order No. 32318, if HGIA seeks to use GEMS funds to finance utility scale Projects, a Program Modification (and not a Program Notification) should be filed.⁴⁴ HGIA subsequently stated, “With this response HGIA is hereby withdrawing its request to finance Ho`ahu or any other CBRE project and will submit a Program Modification during the second or third quarter of 2023, after HGIA launches the C-PACE financing program approved by Act 183, SLH 2022.”⁴⁵ Regarding the Consumer Advocate’s further questions regarding how HGIA would provide the information required as part of a Program Modification filing, as well as whether and how HGIA would evaluate and ensure that a CBRE project receiving GEMS financing would be cost-effective for all consumers and result in net benefits to both subscriber and non-subscribers, HGIA indicated this would be included in a Program Modification to be submitted in 2023.⁴⁶ HGIA also deferred responses to questions regarding the number and types of CBRE projects expected, demand for GEMS financing from these types of projects, the impact of GEMS financing on the financing costs the developers would otherwise face, and how benefits, including any savings, would be passed on to consumers rather than developers, to its to-be-submitted Program Modification.⁴⁷

⁴³ At the Technical Conference, HGIA indicated that it was requesting approval for all CBRE, including utility-scale and smaller projects.

⁴⁴ Decision and Order No. 32318, at 86.

⁴⁵ Response to CA/HGIA-IR-12.a.1.

⁴⁶ Response to CA/HGIA-IR-12.a.1 and b.

⁴⁷ Response to CA/HGIA-IR-13.

Regardless of whether HGIA is requesting financing for CBRE utility-scale projects⁴⁸ or smaller CBRE projects, the Consumer Advocate maintains that further information should be provided to allow the Commission to assess whether such an expansion of GEMS financing is in the public interest. While HGIA described an example of a CBRE project it would like to finance for an energy cooperative, many of the details associated with HGIA's proposed loan product and eligible borrowers are unclear. As indicated in the Consumer Advocate's IRs, HGIA should also address, to the extent that GEMS program funds will be provided to a third party (i.e., CBRE developer), how subscribers and non-subscriber ratepayers will benefit from a CBRE project utilizing GEMS financing compared to the same project with an alternate source of financing. Further analysis should also be provided regarding the market-based alternatives available to CBRE developers, or CBRE developers of projects for LMI subscribers (if HGIA plans to limit GEMS financing to such projects). Finally, HGIA should discuss what mechanisms would be put in place to ensure that the benefits, including any savings, associated with GEMS financing are passed on to consumers, rather than to third-party investors.

The Consumer Advocate contends that HGIA has not provided sufficient information to support its request to utilize GEMS financing for CBRE and recommends that the Commission not approve this request.

⁴⁸ Although HGIA stated in response to CA/HGIA-IR-12.a.1 that it would withdraw its request to finance CBRE projects and resubmit its request as a Program Modification, HGIA indicated at the Technical Conference that it would be open to the Commission approving HGIA's CBRE financing request through the Program Notification if Commission chose to do so.

D. USE OF THE GEM\$ ON-BILL MECHANISM TO SUPPORT PROJECTS THAT ARE NOT FINANCED BY GEMS.

HGIA requests the ability to use the GEM\$ on-bill repayment mechanism for CBRE and other projects that do not utilize GEMS financing, such as projects that would enable ratepayers to participate in grid services or other utility programs. HGIA states that it would apply the same savings requirements to the use of the on-bill repayment mechanism for non-GEMS funded projects. In response to PUC-HGIA-IR-121, HGIA states:

As a hypothetical example, assume a household installs a solar + storage system and implements other distributed energy programs (e.g., controlled water heaters) as part of the home's energy reduction strategy. The Authority would like to apply grid services credits made available through the installations toward energy savings to minimize down payment requirements, as may be applicable. [footnote omitted]

HGIA further states, in response to PUC-HGIA-IR-122, which asked HGIA to identify any other utility programs for which HGIA would like to make the GEM\$ available:

With only \$23.7 million in GEMS funds available to lend, the Authority would like to facilitate solar for LMI and other underserved ratepayers without the requirement to provide project financing, if the project can be financed with private capital.

As mentioned in response to PUC-HGIA-IR-119[e], allowing HGIA to service CBRE projects leveraging its on-bill repayment mechanism, without HGIA financing, will mitigate risks for private capital providers and enable more CBRE projects to expand accessibility to LMI ratepayers.

The process would be identical to CBRE projects financed with GEMS loan capital, except, upon receipt of subscription payments from HECO, HGIA will transfer funds collected to the [Developer/Subscriber Organization], net of a servicing fee.

In its notification, HGIA's request stated that, if approved, the on-bill mechanism would be used for "other projects", but HGIA clarified that, should the Commission approve this request, the GEM\$ on-bill mechanism would be limited to the energy

improvements that have been already approved for GEM\$ financing, including, subject to Commission approval, CBRE projects.⁴⁹ HGIA further indicated that, if the participant is installing both a project financed by GEMS (e.g., solar) and a project that is not financed by GEMS (e.g., battery storage), HGIA calculates the bill savings the same way as if the investments were entirely financed by GEMS, in that the total investment (e.g., GEMS funded solar PV plus non-GEMS financed battery storage) would still need to meet the minimum GEM\$ bill savings requirement.⁵⁰

Regarding the incremental costs that are expected to be incurred to maintain or operate the on-bill mechanism, HGIA indicated that, in its discussions with the Hawaiian Electric Companies regarding incorporating the on-bill repayment mechanism as part of the CBRE portal, the Companies received a “rough order of magnitude” estimate of \$1 million for implementation that is estimated to take 5-6 months.⁵¹ When asked at the Technical Conference whether HGIA had assessed the incremental costs it would incur if it were to act as a payment servicer for CBRE projects or any other non-GEM\$ funded products, HGIA indicated that the all-in costs have not been calculated, and confirmed that the additional work would fall upon HGIA’s staff of five persons.⁵²

The Consumer Advocate supports the use of the on-bill mechanism, as a means to help customers, especially those who are in hard-to-reach, underserved markets and who are capital-constrained, to make cost-effective, renewable energy and energy

⁴⁹ Technical Conference.

⁵⁰ Technical Conference.

⁵¹ Response to CA/HGIA-IR-15.c.

⁵² Technical Conference.

efficiency investments. The Consumer Advocate questions, however, whether HGIA's request should be approved. As noted throughout its notification, HGIA's limited resources are inhibiting its ability to fulfill reporting requirements and other tasks. Allowing the proposed change would increase the costs and time requirements of HGIA staff. Thus, as allowing the proposal would appear to incur additional program costs and place an unknown but potentially significant amount of additional work on HGIA's limited resources,⁵³ the Consumer Advocate offers that, rather than allow the proposed change, the Commission should consider exploring, given the establishment of the on-bill process for GEMS purposes, whether the Companies should instead act as the payment servicer in using the on-bill payment mechanism for projects that do not utilize or need GEMS financing, including, potentially, CBRE projects. This would appear to be more efficient to the extent that the product is not being financed by GEMS. Moreover, if the use of the GEM\$ on-bill mechanism is approved for CBRE projects, the Companies may be well positioned to act as payment servicer to the extent that the Companies already serve to administer the CBRE program and maintain the CBRE portal.

⁵³ HGIA described its resource constraints in response to CA/HGIA-IR-8.b:

The legislature has authorized only five full-time employees for HGIA. The Agency currently has almost 800 loans in process or being serviced. Loan origination and processing duties includes loan origination, underwriting, approval, document preparation, loan closing, loan funding and onboarding. Servicing duties include the collection of monthly loan payments, collection activity, subordination requests, assumption requests and payoff requests. Additionally, staff is tasked with marketing and business development activities (Energy Fairs, Small Business Fairs, Contractor Outreach, presentations, etc.) to continue to add loan applications into its pipeline; LMI specific planning activities (Solarize 808, Energy Equity Hui, LMI Customer Advisory Council, etc.); sourcing additional loan capital; as well as implementing new programs approved by the Legislature.

E. INCLUDING NON-UTILITY EXPENSE SAVINGS WHEN DETERMINING “ENERGY SAVINGS”.

HGIA requests that non-utility expenses, such as gas and maintenance, be included as part of a participant’s energy savings calculation to reflect that “oversizing” a solar PV system may confer savings to participants who are sizing their system for additional electric vehicle (“EV”) charging load. HGIA provides, in response to CA/HGIA-IR-14, a numerical example of how HGIA would calculate the savings “Pre-PV” and “Post PV+EV” to include electric energy as well as gas costs.⁵⁴ HGIA states that GEMS financing will only be made available to underserved consumers and that it has received “inquiries, requests, and comments from LMI households interested in purchasing EVs.”⁵⁵ HGIA states that if a prospective EV owner or lessee is eligible to oversize their PV system to accommodate EV load, they will be asked to sign an attestation that they will purchase/lease an EV within the next 12 months.⁵⁶

The Consumer Advocate understands HGIA’s contention that looking at electricity consumption alone, when the electricity consumption is being used to offset other expenses (i.e., gasoline), may not convey the full impact of the participant’s investment decision. At the same time, however, the Consumer Advocate is concerned that HGIA’s request to allow “non-utility expense savings when determining “energy” savings” may also be misleading if there are other expenses associated with the participant’s

⁵⁴ See also response to PUC-HGIA-IR-128.

⁵⁵ Response to CA/HGIA-IR-14.b and c.

⁵⁶ Response to PUC-HGIA-IR-23.b.

investment (e.g., car loan or lease payments) that will impact the participant's ability to pay their electricity bill, including their on-bill loan obligation.

In addition, the Consumer Advocate has further concerns about how the determination of energy savings might be accomplished with making gross assumptions and/or subjective estimates (e.g., how transportation costs (both pre- and post-EV adoption), energy costs (both pre- and post-PV), and any other non-utility costs might be reliably estimated and the assumptions that will be used to determine energy savings). If there is a possibility that energy savings – as compared to bill savings – may require formulaic assumptions that will not provide reasonable assurances about the overall savings that intended participants will experience, this proposal could lead to unintended consequences where the intended beneficiaries could have additional encumbrances, delinquencies, adverse credit reporting events, disconnections, etc. Before the proposed change is adopted or allowed, the Consumer Advocate recommends that greater support and clarity should be established to ensure that intended participants will indeed benefit from the proposed change and that all customers' interests are not adversely affected.

F. BUNDLING RETROFITS TO MEET MINIMUM SAVINGS REQUIREMENTS.

HGIA requests that bundling energy improvements, such as lighting or solar PV installations with energy efficiency installations, be allowed in order to meet the minimum savings required to qualify for GEM\$ financing. HGIA confirmed at the Technical Conference that this request is limited to energy improvements that have been approved for GEM\$ on-bill financing. In response to PUC-HGIA-IR-126, HGIA stated that bundling

energy efficient lighting with HVAC and/or solar PV with HVAC could make it more appealing for commercial customers to invest in efficiency equipment.

The Consumer Advocate does not oppose this request to the extent that it is limited to products previously approved by the Commission as eligible for GEMS financing⁵⁷ and to the extent that the bundled improvements will still meet the minimum bill savings requirement of ten percent or modified minimum bill savings if the earlier request regarding expanding eligibility is expanded.

G. CHANGES TO THE ITEMS PROPOSED IN PN 15 SHOULD BE PROPOSED THROUGH THE PROGRAM NOTIFICATION AND/OR MODIFICATION PROCESS AND NOT THROUGH THE ANNUAL PLAN.

HGIA stated in PN 15 that “[a]ny subsequent changes to the details described herein will be proposed through the GEMS Annual Plan.”⁵⁸ The Consumer Advocate reiterates that the Annual Plan should not be viewed as a substitute for the Program Notification/Modification review process.⁵⁹ HGIA states in response to CA/HGIA-IR-18 that it is “not proposing that proposals made in its Annual Plan be a substitute for the Program Notification and Program Modification process” and that it is not anticipating including additional GEMS Program elements in its Annual Plan.

⁵⁷ Although HGIA noted in response to PUC-HGIA-IR-126 that it may make sense for residential customers to bundle solar hot water heaters and refrigerators or solar PV and refrigerators, should the Commission approve additional residential eligible improvements (e.g., refrigerators), the Consumer Advocate maintains its position, described in comments regarding the GEM\$ Program, that HGIA should work with Hawaii Energy and/or other industry experts to submit a Program Modification for residential energy efficiency. See CA Comments on GEM\$ Program, at 10-15.

⁵⁸ PN 15, at 23.

⁵⁹ See Letter From: Consumer Advocate To: Commission Re: Docket No. 2014-0135 - In the Matter of the Application of The State of Hawaii Department of Business, Economic Development, and Tourism For an Order Approving the Green Infrastructure Loan Program, filed on April 7, 2017.

III. RECOMMENDATION.

Based upon the above, the Consumer Advocate recommends that:

- HGIA's proposed changes to GEM\$ On-Bill Program eligibility and savings requirements should not be approved at this time.
- The reporting of certain metrics may be discontinued but consideration should be given as to whether more meaningful alternatives might provide further transparency regarding program operation.
- Further information should be provided in support of HGIA's request to use the GEM\$ On-Bill Program to finance CBRE projects, including whether and how HGIA would evaluate and ensure that a CBRE project receiving GEMS financing would be cost-effective for all consumers and result in net benefits to both subscribers and non-subscribers.
- Further information should be provided in support of HGIA's request to use the GEM\$ On-Bill Program for projects that are not financed by GEMS. Consideration should be given as to whether it is more efficient for the Hawaiian Electric Companies to act as the payment servicer in such instances.
- Further information should be provided in support of HGIA's request to include non-utility expense savings when determining energy savings to establish how assumptions regarding transportation costs, energy costs, and any other non-utility costs will be reliably estimated so that the intended

participants will see overall savings and all customers' interests are not adversely affected.

- Bundling Commission-approved Energy Improvements may be allowed to the extent that the bundled improvements will still meet the minimum bill savings requirement of ten percent or, if the Commission approves an expansion of eligibility requirements, the modified minimum bill savings requirement.
- Changes to the items proposed in PN 15 should be proposed through the Program Notification and/or Modification Process and not through the Annual Plan.

DATED: Honolulu, Hawaii, December 19, 2022.

Respectfully submitted,

By /s/ Dean Nishina

DEAN NISHINA

Executive Director

DIVISION OF CONSUMER ADVOCACY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S STATEMENT OF POSITION ON PROGRAM NOTIFICATION NO. 15** was duly served upon the following parties electronically to the e-mail addresses below pursuant to HAR § 16-601-21(d), as modified by Order No. 38270 Setting Forth Public Utilities Commission Electronic Filing and Service Procedures, filed on March 14, 2022.

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