BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAIʻI

In the Matter of	)	
	)	
PUBLIC UTILITIES COMMISSION	)	Docket No. 2018-0088
	)	
Instituting a Proceeding to Investigate	)	
Performance-Based Regulation.	)	
	)	

BLUE PLANET FOUNDATION'S OPENING BRIEF FOR PBR PHASE 5

AND

CERTIFICATE OF SERVICE

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I. INTRODUCTION AND SUMMARY

Blue Planet Foundation, through its counsel Earthjustice and expert consultant Ronald Binz, provides this opening brief in response to Order No. 41639, filed on April 4, 2025, requesting briefing by the parties for Phase 5 of this Performance-Based Regulation ("PBR") proceeding. The Commission has articulated two main questions: (1) how have the Hawaiian Electric Companies ("Company") performed under the PBR Framework under the first multi-year rate period ("MRP1"); and (2) how have "specific PBR mechanisms" performed during MRP1, and which specific PBR mechanisms should be examined for potential modification. Blue Planet agrees with distinguishing these two inquiries and emphasizes that, while they are interrelated, they are *not* synonymous or parallel. Poor performance by the Company, for example, may not mean PBR mechanisms are malfunctioning, but rather they are working as intended. Particularly as to claims about the Company's financial performance, the parties and Commission must appreciate that the fundamental purpose of the PBR Framework is to give the *Company* more responsibility over its *own* performance.

On this first question of the Company's performance, Blue Planet continues to maintain that any performance evaluation should begin with a *self-evaluation* by the Company, which it still has not done. Particularly on the key question of the Company's performance on achieving cost efficiencies and savings, the Company holds the necessary information and is best positioned to process and share the results. Blue Planet will thus reserve its opportunity to respond in its reply brief to any proper self-evaluation the Company may provide in its opening brief. As an initial observation, however, the Company appears to be meeting goals and expectations at some levels, but underperforming in various important respects.

On the second question, Blue Planet clarifies that the inquiry should focus not just on "specific PBR mechanisms" in isolation, but the PBR Framework in its totality, recognizing the interplay between all of the framework's components. Along these lines, the PBR Framework appears to be fundamentally sound and not in need of any structural reforms. By definition, the Company's continuation of profit levels well within the wide latitude afforded under the Earnings Sharing Mechanism ("ESM") deadband indicates that the PBR Framework is not demonstrably malfunctioning or producing anomalous or unjust results. Nonetheless, adjustments can be made to specific mechanisms: for example, Blue Planet continues to recommend that the Commission increase the overall financial value of Performance Incentive Mechanisms ("PIMs"), as well as the Company's share of fossil fuel costs under the Energy Cost Recovery Clause ("ECRC").

Most importantly, however, Blue Planet must take this opportunity to raise grave concerns about the direction of this PBR process, which threatens to reverse years of work and progress in establishing Hawaiʻi as a leader in the urgently needed transformation of the electric system. In particular, the Commission's decision to invite a full-scale traditional cost-of-service regulation ("COSR") rate case to "re-base" the Company's target revenues casts uncertainty on the continued integrity of the PBR Framework. It also calls into question the purpose of these ongoing PBR proceedings, including this review of the performance of PBR mechanisms that could largely be rendered ineffective or irrelevant by a return to COSR.

While the Commission may not be intending to backtrack on the vision for PBR established in its original Decision & Order No. 37507,[1] it is unclear how this process is not currently headed in that unfortunate direction. At minimum, further attention and clarification is necessary to better articulate how the Commission contemplates the COSR rate case will align with this parallel PBR proceeding, and particularly how the Commission will ensure that the rate case will not dictate outcomes and foreclose opportunities for the PBR Framework under MRP2. The future of utility regulation in Hawaiʻi will depend on this Commission continuing to exercise the leadership that built our landmark PBR Framework to forge a new path forward for the utility, its customers, and the state.

II. ANY COMPREHENSIVE REVIEW MUST BEGIN WITH A SELF-EVALUATION AND INCLUDE A TRANSPARENT AND INDEPENDENT EVALUATION OF THE COMPANY'S PERFORMANCE.

Blue Planet and other parties have emphasized for months that, as a key early step in any comprehensive performance review, the Company should provide a self-evaluation of its own performance under PBR.[2] Contrary to assertions in the working group, the Company has done no such self-evaluation to date. Rather, the Company has repeatedly focused on how its past and projected profit levels fall

[1] Decision & Order No. 37507, filed on December 23, 2020 ("D&O No. 37507).

[2] *See*, *e.g.*, Blue Planet's Brief, filed on December 5, 2024, at 13

below its authorized return on equity ("ROE"), yet it has remained notably silent on any cost savings it has actually sought and achieved.[3] Claims about profit levels are unhelpful without insight into this other essential part of the equation.[4] The Company is responsible for cost savings under PBR and should be directly addressing this in this PBR review, starting with this briefing.

Blue Planet will reserve its opportunity to address any forthcoming information in its reply brief. If the Company does not provide any self-evaluation, the Commission should direct the Company to do so in an order and/or information requests.

To best inform its comprehensive review of PBR, the Commission should also arrange for an independent inquiry, analysis, and report of the Company's performance, including on cost control. The Commission previously took leadership in directing the management audit of the Company, which informed the Commission's decisions to enable cost savings for customers. The current comprehensive review should build on this work and include an update on the savings achieved in response to the audit, as well as a similar inquiry looking

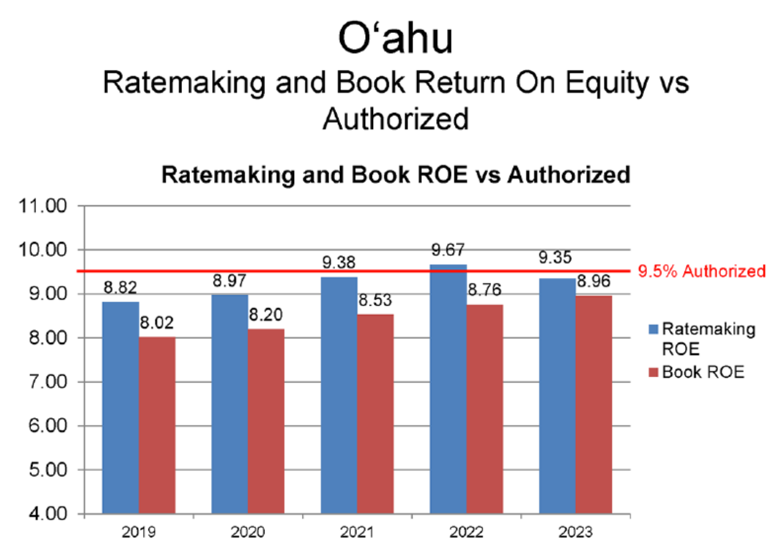
[3] It also ignores the further question of how an almost 10% authorized ROE offers any relevant benchmark in this case—either under traditional regulation of an industry that is broadly insulated from risk and competition, or even more so under the new PBR paradigm that mandates tying profits to actual performance.

[4] Ulupono Initiative ("Ulupono") has offered revealing insight that much of HECO's claimed "underperformance" on ROE is attributable to the misalignment between the utility's actual and authorized capital structure, as well as the give-back prompted by the Commission's management audit. *See* Ulupono's Brief, filed on December 5, 2024, at 4.

forward to identify and plan further savings opportunities, including over the longer term.

At this time, pending the necessary self-evaluation and independent review or audit of the Company's performance, this discussion includes some initial observations based on the available information. Blue Planet appreciates Commission staff's work in compiling the data on the Company's website in a consolidated set of documents, which at least helps the parties literally "get on the same page" for reference.

As for the Company's financial performance, although ROE is a COSR-centered metric and should not be a controlling measure for performance under PBR,[5] based on this COSR perspective, the Company's ROE for HECO on O'ahu has increased since the beginning of MRP1 in 2021, compared to before:[6]



[5] *See* Blue Planet's Comments, filed on July 18, 2024, at 5-7; *see also* n.3 above.

[6] The table in the compilation goes up to 2023; the Company's website now includes 2024: https://www.hawaiianelectric.com/about-us/performance-scorecards-and-metrics/financial.

While the ROE for MECO and HELCO show different patterns (for MECO, an initial increase, then a drop in 2023; for HELCO, a dip in 2021, then a rebound over 2022-23), this again highlights the need for a transparent and objective accounting to elucidate the reasons for these various trends.

At a high level, it should be noted that, despite the Company's prominent role in the Lahaina wildfire disaster in 2023, it continued to report profits until this past year, when its wildfire liabilities accrued.[7] The Company's contributions to the worst disaster in Hawai'i's history, of course, directly reflect on its performance and must be fully acknowledged and addressed in any comprehensive performance review.

On cost control, the overall trend has been in the upward direction for costs (or downward performance for cost control).[8] Non-Annual Revenue Adjustment ("ARA") costs have gone up, mostly through ECRC revenue increases. Costs directly and immediately under the Company's control have also gone up, as reflected in the upward trends in rate base per customer and O&M costs per customer. Meanwhile, the Company's target revenues have continued to increase, with a perceptible acceleration in growth since the beginning of MRP1 due to the rise in inflation on which the ARA is indexed.

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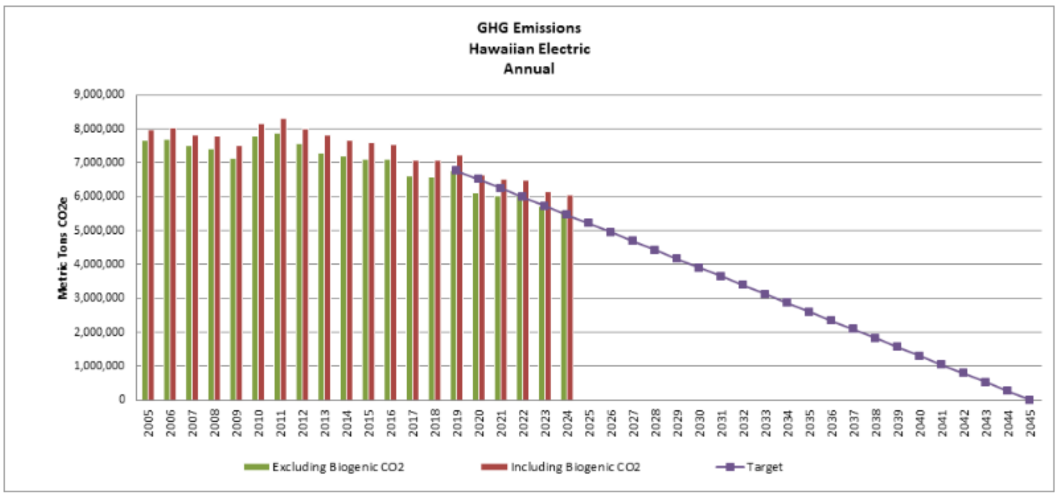
[7] *See* https://www.hei.com/investor-relations/default.aspx.

[8] *See* https://www.hawaiianelectric.com/about-us/performance-scorecards-and-metrics/cost-control.

In a more positive light, progress on renewable energy adoption and greenhouse gas reduction appears to be heading in the right direction.[9] RPS compliance, system renewable energy, and total renewable energy have continued to track upward. And both GHG emissions and GHG intensity are on a declining slope, roughly in line with the target of a straight-line reduction to carbon neutrality by 2045:



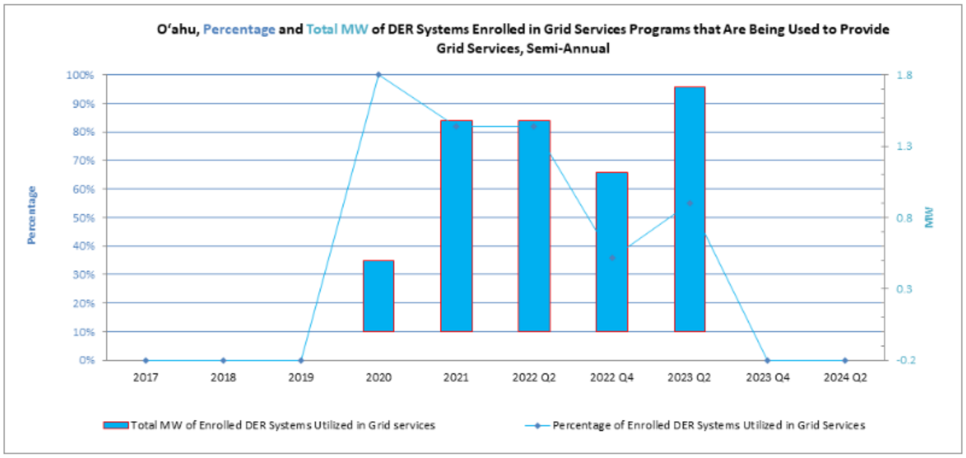
On DER asset effectiveness,[10] the level of DER grid services capability (DER with energy storage) continues to increase, although it remains in the single digits. Likewise, DER grid services enrollment is also increasing, but is still only around 1% across the Company. For the important metric of DER grid services utilization, indicating whether enrolled DERs are actually being utilized, the reports are

[9] *See* https://www.hawaiianelectric.com/about-us/performance-scorecards-and-metrics/renewable-energy; https://www.hawaiianelectric.com/about-us/performance-scorecards-and-metrics/ghg-reduction.

[10] *See* https://www.hawaiianelectric.com/about-us/performance-scorecards-and-metrics/distributed-energy-resource-(der)-asset-effectiveness.

unclear. The graphs show the levels of utilization dropping to zero for the various utilities during 2023 Q4 or 2024 Q2. The Company should confirm whether this is a glitch in reporting or breakdown in actual performance:

Oahu



As a final note, further inquiry and "synthesis" is needed on the Company's performance under the Commission's established PIMs. These metrics presumably bear extra significance and attention since the Commission deemed them to rise to the level of importance that warrants including direct financial incentives. Yet, these remain the most non-transparent and inaccessible of all the performance metrics to the Commission, parties, and public. As the Commission directed, the Company has included an "annual performance review" with its requests for PIM revenues in its spring reports. But the Company has not filed these reports in this docket and, in contrast to other performance metrics, has not provided them in any readily available and viewable format.

Moreover, the Commission intended these annual reports to be "predominantly ministerial in nature."[11] They thus simply report the results under the PIMs on a piecemeal, year-to-year basis, without any comprehensive view and analysis of trends over time. In other words, they do not provide any *synthesis* necessary to inform a comprehensive review of the PIMs specifically or PBR generally. Highlighting these shortfalls and challenges with the Company's reporting, the Commission staff's compilation documents also do not include any of the data on the Company's performance on these priority PIMs.

This is critical missing information. The Company should include such analysis in its foundational self-evaluation, or the Commission should otherwise ensure that the analysis is conducted and provided for the record in this docket.

III. THE PBR FRAMEWORK IS FUNDAMENTALLY SOUND, BUT SERIOUSLY THREATENED BY THE PENDING RETURN TO A COSR RATE CASE.

Nothing in the operation of the PBR Framework during MRP1 has indicated that any fundamental modifications are needed at this time. The PBR Guiding Principles and Goals and Outcomes that the Commission established through the previous extensive process are still sound. None of the parties have suggested any additions, deletions, or other modifications are needed at this level.

Fundamental modifications are also not needed to the integrated body of mechanisms comprising the PBR Framework. None of the parties have suggested,

[11] D&O No. 37507 at 202.

for example, that a mechanism like the Exceptional Project Recovery Mechanism ("EPRM") to address major projects is not justified, although parties have been discussing how the guidelines for the mechanism could be refined to supposedly better fulfill its purpose.

Similarly, none of the parties have suggested that mechanisms like the ECRC and Purchased Power Adjustment Clause ("PPAC") are no longer necessary to pass through certain costs. Blue Planet, however, maintains that the time is ripe to modify the ECRC to: (1) increase the utility's percentage of cost sharing (while continuing the accompanying guardrails, including the annual cap on sharing and reset of the fuel cost baseline); (2) initiate a long-term phase out of the mechanism in line with the downward trajectory toward carbon neutrality; and (3) discontinue the heat rate incentive to maximize flexibility in the operation of fossil fuel plants as renewable penetration continues to increase.[12] The Commission adopted the current ECRC "risk sharing" mechanism of 2% during the last round of rate cases almost a decade ago, as a preliminary "conservative and gradual" starting point.[13] To the extent the Commission considers this the time to open a full rate case, it is also time to revisit the ECRC sharing percentage and continue the progress beyond the Commission's conservative starting point.

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[12] *See* Blue Planet's Phase 2 Initial Statement of Position, filed on June 18, 2020 ("ISOP"), at 54-66.

[13] *In re Hawaiian Elec. Co.*, Docket No. 2016-0328, Final Decision & Order No. 35545, filed on June 22, 2018, at 78, 83.

Blue Planet, along with other parties including Ulupono and the Company, have been aligned in recognizing that the approach to PIMs needs to be improved. In particular, the value of the financial incentives available through the PIMs should be increased. The initial values fell well below the 200 basis points that Blue Planet recommended as a minimum initial step.[14] Ulupono in its brief highlights how the negligible proportion of PIM rewards in relation to net income provides little or no incentive for performance.

To be clear, PIMs alone do not make PBR, and conceiving PBR as simply "layering PIMs onto COSR" fails to comply with the law and sells PBR far short.[15] But shortchanging the PIMs element of PBR is also flawed for the same reasons.

As stated above, the necessary synthesis of performance data under the priority PIMs is still lacking. Of deeper concern, however, is how PIMs that the Commission has previously prioritized have been allowed to languish or lapse. The DER utilization PIM has been left in limbo for years, still with no incentive to support this priority outcome. Further, the DER interconnection PIM expired at the end of 2024, with no indication of any follow up.

Such loss of direction and momentum for the PIMs undermines the purpose of PIMs and PBR. Specifically where a PIM like the DER interconnection PIM, which seems to have helped improve the Company's performance on this front, is

[14] Blue Planet's ISOP at 68.

[15] *See* Haw. Rev. Stat. § 269-16.1(a) (mandating performance incentives that "directly tie an electric utility's revenues to that utility's achievement on performance metrics and break the direct link between allowed revenues and investment levels" in the regulation of electric utility rates).

passively allowed to expire, this interruption threatens to erode performance and deprive the Commission and interested stakeholders of valuable continuity in the record. The Commission should avoid such stop/start setbacks and not wait to take action on specific PIMs (or other important mechanisms) such as the DER interconnection PIM. Rather, it can continue to proactively maintain and improve these mechanisms on an ongoing basis in advance of a more comprehensive review and decision(s) on the PBR Framework.

All this discussion of the PBR Framework and its components, however, is being overshadowed by the Commission's decision to invite a traditional rate case. Again, this opens the way to historic cost increases on customers and a return to COSR. It is unclear and unsettling what will be left of PBR with the Commission having decided to recenter COSR through the rate case.

The Commission may have signaled an intention to leave a door ajar on this question, suggesting that the notion of "revenue sufficiency" is "more nuanced under the PBR Framework," and that a determination of "revenue sufficiency" based on a test-year wishlist by the Company "does not necessarily mean that the entire amount must be implemented via an adjustment into the Companies' base rate schedules or the calculated basis for Target Revenues adjustments in the ARA formula."[16] Yet, at the same time, the Commission freely adopted the "process and timeframe proposed by [the Company]" under the COSR system,[17] contemplating a

[16] Order No. 41575, filed on February 27, 2025, at 29-30.

[17] *Id.* at 32-34.

traditional interim decision of "probable entitlement" by October 2026 that would promptly be applied as the new baseline for the ARA under MRP2.[18]

The Commission's decision falls short on providing useful direction for what the Commission and parties should be addressing or expecting to accomplish in the upcoming phases of this PBR process. Will the COSR rate case effectively determine the bulk of the trajectory and outcome for MRP2? Will this PBR process then be left to address the remaining issues on the margins of the COSR rate case? Would the scale of potential COSR-based revenue and rate increases leave any room to incorporate meaningful opportunities to earn revenues through PIMs? Would an interim decision on "revenue sufficiency" allow or require the Company to earn any portion of its target revenue through actual *performance*? Will PBR be ultimately relegated to COSR with PIMs layered or sprinkled on top? Finally, how does all of this comply with the legal mandate to "break the direct link between allowed revenues and investment levels"?

Blue Planet appreciates the Commission's attempt to provide some outline on the path forward in this critical transition between MRPs under PBR. But more consideration and clarity is needed at the earliest opportunity to inform the objectives of this PBR process and ensure that the COSR rate case does not end up eclipsing this docket and undoing the years of work and progress to establish the PBR Framework and transform the utility and regulation in Hawai'i.

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[18] Company's Brief, filed on December 5, 2024, at 25.

IV. CONCLUSION

Blue Planet thanks the Commission for providing this opportunity for parties to offer their insights and feedback. The future of utility regulation in Hawaiʻi will depend on continued leadership by this Commission to carry forward the vision of PBR to enable the necessary transformative changes for the benefit of customers and the public. As discussed above, Blue Planet respectfully requests that the Commission provide further early guidance, particularly on the alignment between the COSR rate case and this PBR review, to facilitate the direction in this proceeding and avoid any unintended and untoward outcomes.

DATED: Honolulu, Hawaiʻi, May 5, 2025.

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I hereby certify that on the following date a copy of the foregoing document was duly served upon the following parties as follows:

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FILED

2025 May 05 P 16:00

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2018-0088