

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF HAWAII

In the Matter of the Application of

MAUI ELECTRIC COMPANY, LIMITED

For Approval of Power Purchase Agreement  
for Renewable Dispatchable Generation with  
Kahana Solar, LLC.

DOCKET NO. 2020-0142

**REPORT OF PARTIES AND PARTICIPANTS ON MEDIATION**

**EXHIBIT A**

**AND**

**CERTIFICATE OF SERVICE**

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

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DOCKET NO. 2020-0142

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For Approval of Power Purchase Agreement  
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**REPORT OF PARTIES AND PARTICIPANTS ON MEDIATION**

Applicant Maui Electric Company, Limited (“Maui Electric”); the State of Hawaii Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (“Consumer Advocate”); Kahana Solar, LLC (“Kahana Solar”); and West Maui Preservation Association (“WMPA”) hereby jointly submit this stipulated report on the formal mediation of the above-captioned matter, as follows.

On September 17, 2021, the Commission issued Order No. 37967<sup>1</sup> instructing the Parties (Maui Electric and the Consumer Advocate, “Parties”) and the Participants (Kahana Solar and WMPA, “Participants”) to explore mediation as a means to further discuss and potentially reach agreement on issues raised during the evidentiary hearing held on September 14-15, 2021 in this proceeding.

On September 29, 2021, the Parties and Participants participated in a full-day mediation with Judge Joel August (Ret.) serving as mediator, and subsequently engaged in further mediation communications and discussions (“Mediation”).

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<sup>1</sup> Order No. 37967 Instructing the Parties and Participants to Explore Mediation (“Order No. 37967”).

Pursuant to Order No. 37967, if the Parties and Participants pursue mediation, then the results of the mediation, including whether any agreements were reached, shall be filed by October 15, 2021.

Accordingly, the Parties and Participants are pleased to hereby report that they have reached agreement in the Mediation on certain pending issues in the proceeding, which agreement is memorialized in the Settlement Agreement attached as Exhibit A, which has been fully executed by the Parties and Participants.

The Parties and Participants appreciate the opportunity to provide this report and the Commission's encouragement and support with regard to the mediation process.

DATED: Honolulu, Hawaii, October 15, 2021.

/s/ Julia H.P. Verbrugge  
JULIA H.P. VERBRUGGE  
Attorney for Division of Consumer  
Advocacy

DATED: Honolulu, Hawaii, October 15, 2021.

/s/ Brian Hiyane  
BRIAN HIYANE  
MARISSA OWENS  
Attorneys for Maui Electric Company, Ltd.

DATED: Honolulu, Hawaii, October 15, 2021.

/s/ Douglas A. Codiga  
DOUGLAS A. CODIGA  
MARK F. ITO  
Counsel for Kahana Solar, LLC

DATED: Honolulu, Hawaii, October 15, 2021.

/s/ Ryan D. Hurley  
LAW OFFICE OF RYAN D. HURLEY  
RYAN D. HURLEY

/s/ Bianca Isaki  
LAW OFFICE OF BIANCA ISAKI  
BIANCA ISAKI  
Attorneys for West Maui Preservation  
Association

## **SETTLEMENT AGREEMENT**

This SETTLEMENT AGREEMENT ("Agreement") is entered into as of October 15, 2021 ("Effective Date"), by and between STATE OF HAWAII DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"); MAUI ELECTRIC COMPANY, LIMITED ("Maui Electric"); KAHANA SOLAR, LLC ("Kahana Solar"); and WEST MAUI PRESERVATION ASSOCIATION ("WMPA"). The Consumer Advocate, Maui Electric, Kahana Solar, and WMPA are each referred to as a Party and collectively as the Parties.

### **RECITALS**

**WHEREAS**, on September 15, 2020, Maui Electric filed an Application with the State of Hawaii Public Utilities Commission ("PUC") for approvals relating to the Power Purchase Agreement between Kahana Solar and Maui Electric ("PPA"), and other matters, for a solar photovoltaic facility paired with energy storage ("Project") located in West Maui, pursuant to which the PUC opened Docket No. 2020-0142, with the Consumer Advocate and Maui Electric as parties to that proceeding;

**WHEREAS**, on February 3, 2021, pursuant to Order No. 37603, the PUC granted Participant status to Kahana Solar and WMPA, and decided to incorporate contested case hearing procedures ("Contested Case") in Docket No. 2020-0142;

**WHEREAS**, the Parties engaged in written discovery, submitted written testimonies, and participated in the Contested Case, including the evidentiary hearing held by the PUC on September 14 and 15, 2021;

**WHEREAS**, on September 17, 2021, pursuant to Order No. 37967, the PUC directed the Parties to explore formal mediation with regard to pending issues in Docket No. 2020-0142;

**WHEREAS**, on September 29, 2021, a Mediation was conducted by Judge Joel August (Ret.), which was subsequently followed by numerous communications among the Parties and the Mediator, which Mediation resulted in an agreement on settlement terms which are incorporated in this Agreement; and

**WHEREAS**, this Agreement is made as a compromise and settlement among Kahana Solar, WMPA, and Maui Electric, and is intended to effect a complete and final resolution of all claims, differences and concerns described below;

**NOW, THEREFORE**, in consideration of the promises and agreements contained herein and other good, valuable and adequate consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agree as follows:

### **AGREEMENT**

1. **Community Benefits Package**. If the PPA is approved by the PUC, the Project is constructed and commercial operations commence, then the following shall apply:

a. **General**. Funding from Kahana Solar will be a fixed commitment of a total \$1,375,000, which breaks down to \$55,000 per year of Project commercial operation for 25 years. The \$55,000 will be broken down into an annual \$40,000 allocation or "bucket" ("\$40,000 Bucket") and an annual \$15,000 allocation or "bucket" ("\$15,000 Bucket") of distributions. Funding will be the foregoing set amounts and will not be based on a percentage of PPA revenues.

b. **\$40,000 Bucket.**

(1) The \$40,000 bucket will be allocated at the discretion of Kahana Solar consistent with its corporate vision, values, policies, and sustainability requirements. Initial recipients and programs may include the Friends of Pu'u Kukui Watershed Preserve through the Living Pono Project as part of supporting environmental stewardship, sustaining the Preserve's natural and cultural resources, and protecting a vital water resource for Maui's community; Lahainaluna High School (directly or through the Lahainaluna High School Foundation), and/or the University of Hawai'i Maui College as part of the education and training grant; the Nāpili Kai Foundation's Hawaiian Culture program and/or Maui Cultural Lands' Honokōwai Valley program, as part of supporting West Maui cultural education and environmental protection programs and initiatives; and various sponsorships of events and programs that occur throughout the year in West Maui.

(2) Kahana Solar will refrain from reviewing the selected organizations for the \$40k bucket during the first five year period commencing with commercial operations, but after the first five-year period has concluded, Kahana Solar may review the organizations on an ad hoc or as-needed basis to ensure they are using the funds for the intended programs and initiatives agreed upon, that the organizations are still relevant and providing a positive impact to the community needs, and to continue to incorporate community feedback throughout the life of the project to ensure ongoing contributions in the community benefits package continue to be timely and responsive and align with Innergex's corporate vision, values and policies and sustainability requirements.

c. **\$15,000 Bucket.** For the \$15,000 bucket, Kahana Solar will provide the funds directly to the Hawaii Community Foundation ("HCF"). HCF will establish and administer a grantmaking program to distribute these funds at its sole discretion, subject to the following parameters and guidelines, namely (i) the grant funds must be used for the benefit of the West Maui community, (ii) the grant funds may not be used to support litigation or to pay attorney's fees and costs or other litigation-related expenses, and (iii) the grants must be aligned with Kahana Solar's corporate vision, values, policies, and sustainability requirements around responsible growth that balances people, our planet and prosperity. Apart from establishing these parameters at the outset, Kahana Solar will not be involved selecting grant recipients or have any veto power over HCF's selection of grant recipients (for clarity, there will not be a community advisory board or other similar board or committee).

2. **Decommissioning Security.** The detailed decommissioning plan, including information concerning recycling and reuse of Project components, land restoration, Project removal, and issuance and amount of a security or corporate parent guaranty, will be submitted as a non-confidential submittal to the Public Utilities Commission within five years of a favorable decision and order on the PPA. The plan should remain flexible to allow the adoption of technological advances in re-use/recycling near the end of the Project operating term. The plan will comply with any environmental laws then in place and any permits required.

3. **Local Jobs.** If the Project is constructed, then the following shall apply:

a. Eighty (80)% non-supervisory construction and operations workers' hours associated with the Project will be paid at the prevailing wage equivalent indicated under HRS chapter 104.

b. Kahana Solar will require the Project contractors to give preference to hiring qualified laborers from West Maui, Maui County and then State of Hawaii, in that order, for construction and operations/maintenance employment, before hiring non-resident laborers.

c. Kahana Solar will require that Project contractors comply with all applicable state and federal employment laws.

4. **WMPA Commitments.**

a. No later than October 20, 2021, WMPA shall file a motion with the PUC to withdraw from Docket No. 2020-0142 ("Motion to Withdraw"), which Motion to Withdraw shall indicate that it supports or does not object to approval of the PPA, and shall in addition state that WMPA expressly waives any right to appeal Commission decisions and orders approving the PPA and Application, including both the PPA-related phase and interconnection-related phase of the Docket No. 2020-0142. Kahana Solar's obligations under this Agreement are contingent upon the PUC's timely issuance of an order approving the Motion to Withdraw.

b. WMPA shall not intervene or oppose any other governmental permit or approval for the project, without exception, including but not limited to the County of Maui Special Use Permit, County of Maui Phase II Project District Development Approval Application and Land Use Commission Special Use Permit proceedings.

c. Given that WMPA may continue to have participant status pending PUC granting of WMPA's motion to withdraw, WMPA's further filings in Docket 2020-0142, if any, shall be consistent with supporting or not opposing PPA approval, overhead line approval and other approvals required with respect to the Project. For example, if WMPA files a post-hearing brief related to the contested case hearing it will support or not oppose PPA approval.

5. **No Admission of Liability.** The Parties each acknowledge and agree that there has been no admission of liability, misconduct or fault of any kind whatsoever, and that this Agreement, and all action to be taken in compliance with this Agreement, shall be construed and represented strictly and solely as a compromise and settlement between the Parties for the purpose of avoiding future controversy, litigation and expense.

6. **Complete Agreement.** This Agreement represents the complete and fully integrated agreement of the Parties and supersedes any and all prior or contemporaneous negotiations, discussions and agreements relating to the subject matter of this Agreement. There are no terms to the Parties' agreement that are not expressed in writing in this Agreement. None of the Parties has relied on any representations, statements, or opinions of the other Party or its representatives in entering into and executing this Agreement.

7. **Successors and Assigns.** This Agreement is binding upon and shall inure to the benefit of the undersigned and their successors and assigns.

8. **Tax Consequences.** Each Party shall be responsible for determining the tax consequences to itself, himself or herself of any of the provisions of this Agreement.

9. **Governing Law.** This Agreement is to be governed by and construed in accordance with the laws of the State of Hawaii.

10. **Cooperation.** The Parties each agree to execute any documents and shall promptly provide such other further assurances, information and signatures as reasonably may be requested to carry out the provisions and intent of this Agreement.

11. **Modification.** This Agreement shall not be altered, amended or modified except by a writing executed by each of the Parties or their respective successors in interest.

12. **Captions or Headings; Interpretation.** In this Agreement, the captions or headings of paragraphs and subparagraphs are inserted for convenience, reference and identification only, and shall not control, define, limit or affect any provision of this Agreement. The Parties cooperated in drafting this Agreement, and if it is finally determined that any provision of this Agreement is ambiguous, that provision shall not be construed against any Party as the drafter of the provision.

13. **Signatories/Corporate Authority.** Each person signing this Agreement warrants and represents that, to the extent she/he is executing this Agreement for and on behalf of an entity, she/he has been fully empowered and properly authorized to execute this Agreement for and on behalf of said entity, and instructed by those having the requisite authority to cause said entity to make and enter into this Agreement.

14. **Time of the Essence.** Time is of the essence in the performance of all terms under this Agreement.

15. **Attorneys' Fees.** Each Party shall be responsible for its own attorneys' fees and any costs.

16. **Dispute Resolution.** Should a Party contend that another Party violated its respective obligations under this Agreement (a "Default"), the defaulting party shall: (1) be given written notice of the alleged Default ("Notice") and (2) have a period of thirty (30) days from the date it receives Notice to cure and/ or remedy the alleged Default. Each Party acknowledges and agrees that the sole and exclusive remedy for any alleged Default shall be: (1) specific performance of the terms and conditions of this Agreement and/or (2) an injunction prohibiting any actions from being taken in contravention of this Agreement. The Parties hereby consent to the exclusive jurisdiction of the Circuit Court of the Second Circuit, State of Hawai'i to resolve any and all disputes that may arise regarding the enforcement or clarification of obligations under this Agreement that cannot otherwise be resolved, as contemplated herein; provided, however, before commencing any litigation relating to this Agreement, the Parties shall first attempt to resolve the matter through formal mediation conducted within 30 days under the mediation rules of Dispute Prevention and Resolution of Hawaii. This Agreement and the rights and obligations of the Parties hereto will be governed by and interpreted in accordance with the laws of the State of Hawaii.

17. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall constitute one agreement, even though all parties do not sign the same counterpart. The signature pages taken from separate individually executed counterparts of this Agreement may be combined to form multiple fully executed counterparts. This Agreement may also be executed via an electronic signature in whole or in multiple counterparts. A telecopy, electronic delivery, or other transmission by any party of its signature on an original or any copy of this Agreement over the internet in electronic photostatic format (e.g., .pdf) or similar format or via an electronic signature program shall be deemed to be the delivery by such party of his, her or its original signature hereon.

18. **The Consumer Advocate.** Notwithstanding anything to the contrary herein: the Consumer Advocate reserves its statutory rights to continue to represent and advocate for the interests of consumers, such as addressing issue Numbers 1, 2, 3, and 4 as described by the Commission in Order No. 37603 filed on February 3, 2021, including but not limited to, filing a Post-Hearing Brief; and paragraph 16 (Dispute Resolution), shall be subject to the Consumer Advocate's compliance with State procurement laws.



**IN WITNESS WHEREOF**, the undersigned have executed this Agreement.

**STATE OF HAWAII DEPARTMENT OF COMMERCE  
AND CONSUMER AFFAIRS, DIVISION OF  
CONSUMER ADVOCACY**

By Dean Nishina  
\_\_\_\_\_  
Dean Nishina  
Executive Director

**MAUI ELECTRIC COMPANY, LIMITED**

By \_\_\_\_\_  
Colton K. Ching  
Vice President

**KAHANA SOLAR, LLC**

By \_\_\_\_\_  
Yves Baribeault  
Chief Legal Officer and Secretary, Innergex  
Renewable Energy Inc.

**WEST MAUI PRESERVATION ASSOCIATION**


By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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AND CONSUMER AFFAIRS, DIVISION OF  
CONSUMER ADVOCACY**

By \_\_\_\_\_  
Dean Nishina  
Executive Director

**MAUI ELECTRIC COMPANY, LIMITED**

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Colton K. Ching  
Vice President

**KAHANA SOLAR, LLC**

By \_\_\_\_\_  
Yves Baribeault  
Chief Legal Officer and Secretary, Innergex  
Renewable Energy Inc.

**WEST MAUI PRESERVATION ASSOCIATION**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

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Vice President

**KAHANA SOLAR, LLC**

By  \_\_\_\_\_  
Yves Baribeault  
Chief Legal Officer and Secretary, Innergex  
Renewable Energy Inc.

**WEST MAUI PRESERVATION ASSOCIATION**

By \_\_\_\_\_  
Name \_\_\_\_\_  
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CONSUMER ADVOCACY**

By \_\_\_\_\_  
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Executive Director

**MAUI ELECTRIC COMPANY, LIMITED**

By \_\_\_\_\_  
Colton K. Ching  
Vice President

**KAHANA SOLAR, LLC**

By \_\_\_\_\_  
Yves Baribeault  
Chief Legal Officer and Secretary, Innergex  
Renewable Energy Inc.

**WEST MAUI PRESERVATION ASSOCIATION**

By   
Name A. Ulani Tanigawa Lum  
Title President

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this date a copy of the foregoing document was  
duly served upon the following parties as set forth below:

DEAN NISHINA  
EXECUTIVE DIRECTOR  
DEPT. OF COMMERCE & CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
dnishina@dcca.hawaii.gov  
consumeradvocate@dcca.hawaii.gov

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DATED: Honolulu, Hawaii, October 15, 2021.

/s/ Douglas A. Codiga  
DOUGLAS A. CODIGA  
MARK F. ITO  
Counsel for Kahana Solar, LLC

FILED

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PUBLIC UTILITIES  
COMMISSION

The foregoing document was electronically filed with the State of Hawaii Public Utilities Commission's Document Management System (DMS).