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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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In the Matter of the Application of

HAWAI'I ELECTRIC LIGHT COMPANY, INC.

For Approval of a Power Purchase Agreement for Renewable
Dispatchable Firm Energy and Capacity.

SCOT-20-0000569

APPEAL FROM THE PUBLIC UTILITIES COMMISSION
(Docket No. 2017-0122)

CONCURRING OPINION BY WILSON, J.

I concur with the Majority's decision to remand to the Public Utilities Commission ("PUC"), and write to clarify that the Majority's decision gives discretion to the PUC to determine again whether a waiver of competitive bidding should be granted to Hawai'i Electric Light Company, Inc. ("HELCO"). Just as "the legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible,

inconsistency, contradiction, and illogicality[,]” so too should supreme court case law. Specifically, our decision in Matter of Hawai‘i Elec. Light Co., 145 Hawai‘i 1, 445 P.3d 673 (2019) (“HELCO I”)—must be construed to avoid absurd and illogical results. State v. Tsujimura, 140 Hawai‘i 299, 307, 400 P.3d 500, 508 (2017) (quoting State v. Arceo, 84 Hawai‘i 1, 19, 928 P.2d 843, 861 (1996)).

In Order No. 37205 issued on July 9, 2020, the PUC denied HELCO’s requested waiver, stating that it was “not convinced that granting a waiver for the Hu Honua Project [wa]s justified or in the public interest.” It would be absurd for this court to now endorse an interpretation of our HELCO I decision negating the PUC’s finding that HELCO’s requested waiver is not in the public interest. By precluding consideration on remand of whether the waiver is in the public interest, this court would engage in an ultra vires act endorsing a waiver that has been found to not be in the public interest. Thus, I concur that our decision in HELCO I does not preclude the PUC from exercising its duty to determine under Part II.A.3.d of the PUC’s Competitive Bidding Framework whether a waiver should be granted to HELCO.

/s/ Michael D. Wilson

