

May 18, 2018

**VIA CERTIFIED MAIL AND FAX TO: (907) 777-8301**

Mr. Alan M. Oshima  
President & Chief Executive Officer  
Hawaiian Electric Company, Inc.  
900 Richards Street  
Honolulu, Hawaii 96813

**CPF No. CPF 5-2018-6001S**

Dear Mr. Oshima:

Enclosed please find a Consent Order incorporating the terms of the Consent Agreement between the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Hawaiian Electric Company, Inc. (HECO) which was executed on May 17, 2018. Service of the Consent Order and Consent Agreement by certified mail is deemed effective upon the date of mailing, or as otherwise provided under 49 C.F.R. § 190.5.

Thank you for your cooperation in this matter.

Sincerely,

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

Enclosure: Order and Consent Agreement

cc: Ms. Kim West, Director, Western Region, OPS  
Mr. Chris Hoidal, Senior Technical Advisor, Program Development, OPS  
Mr. Derek Sato, Director, Fuels Infrastructure, Fuels, HECO, at  
derek.sato@hawaiianelectric.com  
Mr. K. Noa Dettweiler-Pavia, Associate General Counsel, HECO, at  
Kahikino.dettweiler@hawaiianelectric.com

**U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
OFFICE OF PIPELINE SAFETY  
WASHINGTON, D.C. 20590**

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<b>In the Matter of</b>	)	
	)	
<b>Hawaiian Electric Company, Inc.,</b>	)	<b>CPF No. 5-2018-6001S</b>
	)	
<b>Respondent.</b>	)	
	)	

**CONSENT ORDER**

By letter dated January 9, 2018, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS or Agency), issued a Notice of Proposed Safety Order (Notice) to Hawaiian Electric Company, Inc. (HECO or Respondent).

In accordance with 49 C.F.R. § 190.239, the Notice alleged that conditions exist on Respondent’s Waiiau Pipeline that pose a pipeline integrity risk to public safety, property, or the environment. The Notice also proposed that Respondent take certain corrective measures to remedy the alleged conditions and ensure that the public, property, and the environment are protected from the potential risk.

In response to the Notice, Respondent requested an informal consultation, whereupon the parties engaged in good-faith settlement discussions that have resulted in the Consent Agreement attached to this Consent Order that settles all of the allegations in the Notice.

Accordingly, the Consent Agreement is hereby approved and incorporated by reference into this Consent Order. The Respondent is hereby ordered to comply with the terms of the Consent Agreement, effective immediately.

Pursuant to 49 U.S.C. 60101, *et seq.*, failure to comply with this Consent Order may result in the assessment of civil penalties of up to \$200,000, as adjusted for inflation (*see* 49 C.F.R. § 190.223), for each violation for each day the violation continues or in referral to the Attorney General for appropriate relief in a district court of the United States.

The terms and conditions of this Consent Order are effective upon service in accordance with 49 C.F.R. § 190.5.

May 18, 2018

Alan K. Mayberry  
Associate Administrator  
for Pipeline Safety

\_\_\_\_\_  
Date

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PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION  
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	)	
<b>Respondent.</b>	)	
	)	

**CONSENT AGREEMENT**

On January 9, 2018, the Pipeline and Hazardous Materials Safety Administration (PHMSA), Office of Pipeline Safety (OPS or Agency), issued a Notice of Proposed Safety Order (Notice) to Hawaiian Electric Company, Inc. (HECO or Respondent). The Notice alleged that conditions exist on Respondent’s Waiiau Pipeline that pose a pipeline integrity risk to public safety, property, or the environment. The Notice also proposed that Respondent take certain corrective measures to remedy the alleged conditions and ensure that the public, property, and the environment are protected from the potential risk.

HECO responded to the Notice by timely submitting a written response and a request for an informal consultation. An informal consultation was held on March 13, 2018 at HECO’s office in Barbers Point, Hawaii.

As a result of the informal consultation, PHMSA and HECO (collectively, Parties) agreed that settlement of this proceeding will avoid further administrative proceedings or litigation of the Notice and that entry into this Consent Agreement (Agreement) is the most appropriate means of resolving the issues raised in the Notice and is generally in the public interest. Therefore, pursuant to 49 C.F.R. Part 190, without adjudication of any issue of fact or law, and upon consent and agreement of HECO and PHMSA, the Parties agree as follows:

**I. General Provisions**

1. Respondent acknowledges that as the operator of the Waiiau Pipeline, Respondent and its Waiiau Pipeline system is subject to the jurisdiction of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. For purposes of this Agreement, Respondent acknowledges that it received proper notice of PHMSA’s action in this proceeding and that the Notice states claims upon which relief may be granted pursuant to 49 U.S.C. 60101, *et seq.*, and the regulations and orders issued thereunder. The Waiiau Pipeline transports low sulfur fuel oil from the Barbers Point Tank Farm (BPTF) eastwards to the Waiiau power generation plant in Pearl City, Hawaii, and is defined more specifically as the *Affected Pipeline Facility* in Paragraph 12(a) of this Agreement.

2. Respondent agrees, for purposes of this Agreement, to address the integrity risks identified in the Notice by completing the actions specified in Section II of this agreement (Corrective Measures) and to abide by the terms of this Agreement. This Agreement does not constitute a finding of violation of any Federal law or regulation and may not be used in any civil or administrative proceeding of any kind as evidence or proof of any fact, fault or liability, or as evidence of the violation of any law, rule, regulation or requirement, except in a proceeding to enforce the provisions of this Agreement.

3. After Respondent returns this signed Agreement to PHMSA, the Agency's representative will present it to the Associate Administrator for Pipeline Safety, recommending that the Associate Administrator adopt the terms of this Agreement by issuing an administrative order (Consent Order) incorporating the terms of this Agreement. The terms of this Agreement constitute an offer of settlement until accepted by the Associate Administrator. Once accepted, the Associate Administrator will issue a Consent Order incorporating the terms of this Agreement.

4. Respondent consents to the issuance of the Consent Order, and hereby waives any further procedural requirements with respect to its issuance. Respondent waives all rights to contest the adequacy of notice, or the validity of the Consent Order or this Agreement, including all rights to administrative or judicial hearings or appeals, except as set forth herein.

5. This Agreement shall apply to and be binding upon PHMSA, and upon HECO, its officers, directors, and employees, and its successors, assigns, or other entities or persons otherwise bound by law. Respondent agrees to provide a copy of this Agreement and any incorporated work plans and schedules to all of HECO's officers, employees, and agents whose duties might reasonably include compliance with this Agreement.

6. For all transfers of ownership or operating responsibility of HECO's Waiiau Pipeline, Respondent will provide a copy of this Agreement to the prospective transferee at least 30 days prior to such transfer and simultaneously provide written notice of the prospective transfer to the PHMSA Western Region Director (Director) who issued the Notice.

7. This Agreement constitutes the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to settlement other than those expressly contained in this Agreement, except that the terms of this Agreement may be construed by reference to the Notice.

8. Nothing in this Agreement affects or relieves Respondent of its responsibility to comply with all applicable requirements of the Federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and orders issued thereunder. Nothing in this Agreement alters PHMSA's right of access, entry, inspection, and information gathering or PHMSA's authority to bring enforcement actions against HECO pursuant to the Federal pipeline safety laws, the regulations and orders issued thereunder, or any other provision of Federal or State law.

9. This Agreement does not waive or modify any Federal, State, or local laws or regulations that are applicable to Respondent's pipeline systems. This Agreement is not a permit, or a modification of any permit, under any Federal, State, or local laws or regulations. HECO remains responsible for achieving and maintaining compliance with all applicable Federal, State, and local laws, regulations and permits.

10. This Agreement does not create rights in, or grant any cause of action to, any third party not party to this Agreement. The U.S. Department of Transportation is not liable for any injuries or damages to persons or property arising from acts or omissions of Respondent or its officers, employees, or agents carrying out the work required by this Agreement. HECO agrees to hold harmless the U.S. Department of Transportation, its officers, employees, agents, and representatives from any and all causes of action arising from any acts or omissions of Respondent or its contractors in carrying out any work required by this Agreement.

11. Upon issuance of the Consent Order, HECO agrees to perform the Corrective Measures set forth below.

12. Definitions:

- a. The *Affected Pipeline Facility* means the 8-inch diameter pipe with 0.322 and 0.500-inch wall thickness, consisting of API 5L-X42 grade pipe. The pipeline is coated with fusion bonded epoxy coating, with 2-inch urethane foam insulation and a High Density Polyethylene (HDPE) jacket. The pipeline was installed in 2004.
- b. The *Affected Segment* means the Waiiau Pipeline, which transports low sulfur fuel oil from Barbers Point Tank Farm (BPTF) to the Waiiau Power Plant in Pearl City, Hawaii, with approximately 12.7 miles of in-service pipeline mileage. The *Affected Segment* runs alongside the Hawaii Highway 1 in two short sections, and it crosses the light rail system at various points along the 12.7 miles of in-service pipeline mileage. The *Affected Segment* is located in a High-Consequence Area (HCA) due to its proximity to the populations of Pearl Harbor and Honolulu, as well as its proximity to Unusually Sensitive Area (USA) ecological resource.

## II. Corrective Measures

13. ***In-Line Inspection (ILI) Assessment.*** HECO shall conduct ILI surveys, and investigate, through calibration digs and anomaly assessments, all anomalies that exceed more than 35% of the nominal wall thickness. The tool used for the first ILI survey must utilize magnetic flux leakage (MFL) technologies. The second ILI survey must utilize ultrasonic technologies. Subsequent ILI surveys will alternate technologies between MFL and ultrasonic technologies (UT).

- a. HECO must conduct the first MFL ILI survey required by this Agreement no later than 60 days after the issuance of a Consent Order. HECO may submit

written documentation of the MFL ILI survey completed on or about April 17, 2018 to the Director to satisfy this requirement.

- b. HECO must conduct the first UT ILI survey required by this Agreement no later than 12 months after completion of the first MFL ILI survey required by this Agreement.
- c. All subsequent ILI surveys required by this Agreement shall be conducted at intervals not exceeding 30 months, but at least once every two calendar years.
- d. The results (draft and final reports) of the ILI surveys required by this paragraph must be sent to the Director within 30 days of receipt of each ILI vendor's report by HECO. Documentation of all subsequent anomaly assessments and associated repairs, must be sent to the Director within 30 days following completion of each anomaly assessment, and or repair.

14. **Patrols.** HECO must patrol the entire length of the *Affected Segment* at least one time per week. The patrols required by this paragraph shall continue until the Director provides written notification to HECO that the patrols are no longer required.

15. **Risk Model.** HECO shall develop a corrosion risk model of the *Affected Segment* and submit the risk model to the Director for review and written approval within 90 days of the issuance of this Consent Agreement. The risk model required by this paragraph must incorporate all susceptible corrosion risk factors such as terrain, water and road crossings, AC/DC interference, soil pH, standing water locations, coating failure, and all verified data from previous calibration digs and ILI results. The risk model required by this paragraph shall be incorporated into HECO's integrity management plan and further developed with future ILI and integrity assessments. This model shall identify the highest areas of susceptible corrosion and HECO shall use the data to mitigate or investigate those areas.

16. **Calibration Digs for Anomalies Between 11% and 35% of the Nominal Wall Thickness.** In addition to the calibration digs required by paragraph 13 of this Agreement, HECO must investigate, through calibration digs and anomaly assessments, at least four anomalies on the first MFL run required by paragraph 13 of this Agreement that exceed 10% of the nominal wall thickness but do not exceed 35% of the nominal wall thickness. If there are more than four anomalies between 11% and 35% of the nominal wall thickness identified on the first MFL run required by paragraph 13 of this Agreement, the calibration digs and anomaly assessments required by this paragraph shall be conducted pursuant to the risk model required by paragraph 15 of this Agreement.

17. **Documentation.** HECO must retain on file documentation of compliance and supporting data to all Items above until this Consent Agreement is terminated. HECO must provide copies of documentation referenced in this paragraph upon written request by the Director.

18. **Quarterly Reports.** HECO must submit quarterly reports to the Director that: (1) include analysis of all available data and results of the testing and evaluations required by this Agreement; and (2) describe the progress of the repairs and other remedial actions being undertaken. The first report will be due 45 days from issuance of a final Consent Order.

19. ***Extensions of Time.*** The Director may grant an extension of time for compliance with any of the terms of the Agreement upon a written request timely submitted demonstrating good cause for an extension. The Director shall respond in writing to any such request.

20. ***Appeals.*** Respondent may appeal any decision of the Director to the Associate Administrator for Pipeline Safety. Decisions of the Associate Administrator will be final.

### **III. Review and Approval Process**

21. With respect to any submission under Section II (Corrective Measures) of this Agreement that requires the approval of the Director, the Director may: (a) approve, in whole or in part, the submission, (b) approve the submission on specified, reasonable conditions, (c) disapprove, in whole or in part, the submission, or (d) any combination of the foregoing. If the Director approves, approves in part, or approves with conditions, HECO will take all action as approved by the Director, subject to Respondent's right to invoke the dispute resolution procedures in Section IV with respect to any conditions the Director identifies. If the Director disapproves all or any portion of the submission, the Director will provide HECO with a written notice of the deficiencies. Respondent will correct all deficiencies within the time specified by the Director and resubmit it for approval.

### **IV. Dispute Resolution**

22. The Director and HECO will informally attempt to resolve any disputes arising under this Agreement. If Respondent and the Director are unable to informally resolve the dispute within 15 days of submittal of Respondent's invoking dispute resolution, HECO may request in writing, within 10 days thereafter, a written determination resolving the dispute from the Associate Administrator for Pipeline Safety providing all information that Respondent believes is relevant to the dispute. If the request is submitted as provided herein, the Associate Administrator will issue a final determination in writing. The existence of a dispute and the PHMSA's consideration of matters placed in dispute will not excuse, toll, or suspend any term or timeframe for completion of any work to be performed under this Agreement during the pendency of the dispute resolution process except as agreed by the Director or the Associate Administrator in writing.

### **V. Enforcement**

23. This Agreement, as adopted by the Consent Order, is subject to all enforcement authorities available to the PHMSA under 49 U.S.C. § 60101, *et seq.*, and 49 C.F.R. Part 190. All work plans and associated schedules set forth or referenced in Section II will be automatically incorporated into this Agreement and are enforceable in the same manner.

### **VI. Recordkeeping and Information Disclosure**

24. Unless otherwise required in this Agreement, HECO agrees to maintain records demonstrating compliance with all requirements of this Agreement for a period of at least five years following completion of all work to be performed. For any reports, plans, or other

deliverables required to be submitted to PHMSA pursuant to this Agreement, Respondent may assert a claim of business confidentiality or other protections applicable to the release of information by PHMSA, covering part or all of the information required to be submitted to PHMSA pursuant to this Agreement in accordance with 49 C.F.R. Part 7. Respondent must mark the claim of confidentiality in writing on each page, and include a statement specifying the grounds for each claim of confidentiality. PHMSA determines release of any information submitted pursuant to this Agreement in accordance with 49 C.F.R. Part 7, the Freedom of Information Act, 5 U.S.C. § 552, DOT and PHMSA policies, and other applicable regulations and Executive Orders.

#### **VII. Effective Date**

25. The term “Effective Date,” as used herein, is the date on which the Consent Order is issued by the Associate Administrator incorporating the terms of this Agreement. Unless specified to the contrary, all deadlines for actions required by this Agreement run from the Effective Date of this Consent Order.

#### **VIII. Modification**

26. The terms of this Agreement may be modified by mutual agreement of the Parties. Such modifications must be in writing and signed by both parties.

#### **IX. Termination**

27. This Agreement shall remain in effect until the Corrective Measures are satisfied, as determined by the Director, or HECO obtains a special permit for the Waiiau pipeline that addresses the safety concerns identified in the Notice and the final results of the January 9, 2018 accident investigation. The Consent Agreement shall not terminate until the Director confirms, in writing, that the Consent Agreement is terminated in accordance with this paragraph. Nothing in this Agreement prevents Respondent from completing any of the obligations earlier than the deadlines provided for in this Agreement.

#### **X. Ratification**

28. The Parties’ undersigned representatives certify that they are fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

29. The Parties hereby agree to all conditions and terms of this Agreement.



**For Hawaiian Electric Company, Inc. (Respondent):**

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Date

**For PHMSA:**

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Kim West  
Director, Office of Pipeline Safety  
PHMSA Western Region  
U.S. Department of Transportation

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Date