

SENT VIA CERTIFIED MAIL

December 11, 2023

Daniel E. Orodenker
Executive Officer
State of Hawai'i Land Use Commission
Department of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawai'i 96804-2359



Re: Annual Compliance Report for AES Lawa'i Solar, LLC Special Permit SP-2018-2, Use Permit U-2018-1, and Class IV Zoning Permit Z-IV-2018-1

Dear Mr. Orodenker,

Attached is a copy of the AES Lawa'i Solar, LLC 2023 Annual Report-Special Use Permit Compliance ("2023 Report") for your review. The 2023 Report is being submitted pursuant to the conditions contained in the following approvals:

1. Condition 8 of the Conditions of Approval contained in the Order Adopting The County of Kauai Planning Commission's Recommendation, Findings of Fact, Conclusions of Law, And Decision And Order To Approve The State Special Use Permit, With Modification (Docket No. SP17-408) approved by the State Land Use Commission, filed November 22, 2017.
2. Condition 8 of the Conditions of Approval contained in the Findings of Fact, Conclusions of Law, And Decision And Order (Special Permit SP-2018-2, Use Permit U-2018-1, and Class IV Zoning Permit Z-IV-2018-1) approved by the Planning Commission of the County of Kauai on September 26, 2017.

Please contact us if there are any questions or concerns.

Sincerely,

Hanna Wood

DESIGN SERVICES INCORPORATED

Hanna Wood
Senior Manager
Portfolio Asset Management & Analytics – West
AES Clean Energy Services, LLC
282 Century Place, Suite 2000
Louisville, CO 80027
P: 303-444-3020
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SENT VIA CERTIFIED MAIL

December 11, 2023

Mary Alice Evans
Director
State of Hawai'i Office of Planning and Sustainable Development
P.O. Box 2359
Honolulu, Hawai'i 96804-2359

Re: Annual Compliance Report for AES Lawa'i Solar, LLC Special Permit SP-2018-2, Use Permit U-2018-1, and Class IV Zoning Permit Z-IV-2018-1

Dear Ms. Evans,

Attached is a copy of the AES Lawa'i Solar, LLC 2023 Annual Report-Special Use Permit Compliance ("2023 Report") for your review. The 2023 Report is being submitted pursuant to the conditions contained in the following approvals:

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10250001-10250001

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AES LAWA'I SOLAR, LLC
2023 Annual Report - Special Use Permit Compliance

#	LAWA'I PERMIT COMPLIANCE/CONDITIONS	2023 AES RESPONSES
1	The solar utility facility shall be constructed and operated as represented. Any changes to the facility and/or operation shall be reviewed by the Department to determine whether Planning Commission review and approval is required.	The facility is operational as represented in this permit.
2	Usable lands of the Petition Area, including areas under PV panels, shall be made available for compatible agricultural use at a lease rate that is at least 50 percent below the fair market rent for comparable properties, as long as the Project is in operation. Compatible agricultural operations shall be established by the Applicant and its successors and/or assigns within six 6 months of the start of commercial power generation. Extensions to this deadline may be granted by the Director of the County of Kaua'i Planning Department (PD) for unforeseen extenuating circumstances. Additional consideration may be given if the Applicant is actively seeking to have such operations established.	The facility is home to more than 200 sheep from nearby Omao Farms that maintain vegetation at the solar facility through managed grazing.
3	If at any time during the term of the Special Permit (SP) no compatible agricultural operations exist on the usable lands of the Petition Area for 6 months, the Applicant shall notify the Director of the Kaua'i PD in writing within 30 days of the end of the 6-month period. If requested by the Planning Director, the Applicant shall attend a meeting of the Planning Commission and submit a report to the Planning Commission detailing the Applicant's actual and reasonable efforts to establish compatible agricultural operations on the usable lands of the Petition Area. The Planning Commission may determine whether probable cause exists to re-evaluate the SP and to hold a hearing pursuant to the Rules of the Planning Commission. Extensions to the 6- month deadline may be granted by the Planning Director for unforeseen extenuating circumstances.	Not applicable. See comment above in #2.
4	The Applicant shall submit for review and obtain the approval of the following: From the Director of the Kaua'i PD, prior to the issuance of a grading or building permit: <ul style="list-style-type: none"> a. Applicant shall minimize or avoid clearing and grading activities from June 1 through September 15. b. A survey map accompanied by a metes and bounds description of the APPROVED Petition Area. c. A site plan showing the area required under Condition 1, above, relating to the minimum land area to be made available for compatible agricultural use. 	AES provided all requested documents and received its grading permit on April 4, 2018.

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<p>5</p>	<p>Prior to the closing of the building permit for the facility, the Applicant shall submit to the Kaua 'i PD proof of financial security, such as a letter of credit or similar assurance, from a creditworthy financial institution satisfactory to Kaua'i PD. The security shall remain in place for the duration of the operation of the Project, with evidence of same provided to the Director of the Kaua'i PD on an annual basis, in an amount approved by the Kaua'i PD as sufficient to decommission the Project and restore the Petition Area to substantially the same physical condition as existed prior to the development of the facility.</p> <p>The applicant shall decommission the facility, including the removal of all equipment related to the facility, within twelve (12) months following the termination of operations of the facility. A change in project ownership or a change in ownership of the land subject to the SP, which warrants a new proof of financial security to decommission the project, shall be submitted to the Kaua'i DP for processing through the Planning Commission, within three (3) months of the ownership change.</p> <p>The Applicant shall incorporate this condition in the license and/or lease agreement with the land owner, and said license and/or lease agreement shall be reviewed for approval by the Kaua'i PD.</p>	<p>AES has ensured there is the \$2,100,000 guaranty in place to ensure removal of the system.</p> <p>Attachment 1 includes fully executed guaranty as evidence in this 2023 annual report.</p>
<p>6</p>	<p>The Applicant shall mitigate impacts to fauna on site as follows:</p> <ol style="list-style-type: none"> a. Applicant shall develop an endangered species awareness training module, which shall include all potential endangered species that may frequent the Petition area. b. All construction workers and solar facility employees shall undergo endangered species awareness training prior to starting work. c. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, external lighting shall be only of the following types: shielded lights, cut-off luminaries, or indirect lighting. Spotlights aimed upward or spotlighting of structures, landscaping or the ocean shall be prohibited. d. Barbed wire shall not be used on the top of any fencing. e. Applicant shall monitor avian injuries occurring at the photovoltaic system, and report occurrences to the USFWS. 	<ol style="list-style-type: none"> a) AES developed and implemented an endangered species awareness training module which was prepared by a local biologist. b) All solar facility employees undergo the training prior to starting work on site. c) Training held March 18th onsite before start of work. d) Barbed wire is not used on top of property fencing. e) AES monitors for avian injuries occurring at the photovoltaic system and any incidents are immediately reported.

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7	The Applicant shall establish the Project within two (2) years of the date of the LUC's Decision and Order approving the SP. Requests for extension of this deadline shall be submitted to the Director of the Kaua'i PD prior to the expiration of the deadline. The LUC may grant an extension to the deadline to establish the Project due to unforeseen circumstances that were beyond the control of the Applicant. This SP shall be valid for a period of thirty-five (35) years from the start of commercial operations, subject to further extensions upon a timely request for extension filed with the Planning Commission at least one hundred twenty (120) days prior to the SP's expiration. Approval of time extensions shall not be required from the LUC.	The project was established within two (2) years of the SP approval.
8	On or before December 31 of each year that the SP is in effect, the Applicant or its successor shall file an annual report to the LUC, OP, and the Kaua'i PD that demonstrates the Applicants' compliance with conditions of the SP.	This report shall serve as the annual report as required to demonstrate our compliance with conditions of the SP.
9	Major modifications to: (1) the Project plans, including but not limited to significant increases in the number of PV panels; (2) amendments to the conditions of approval; (3) significant expansions of the approved area; or (4) change in uses stated herein, shall be subject to the review and approval of the Planning Commission and the LUC. Minor modifications including minor additions to accessory uses and structures, and new incidental uses and structures in the approved area are subject to review and approval by the Director of Kaua'i PD.	There were no major modifications to the Project Plans including but not limited to significant increases in the number of PV panels, amendments to conditions of approval, significant expansions of the approved area or changes in uses stated herein.
10	The Applicant and/or landowner shall notify the Director of Kaua'i PD of: <ul style="list-style-type: none"> a. Any change or transfer of licensee on the Petition Area. b. Any change in uses on the Petition Area. c. Termination of any uses on the Petition Area; and/or d. Transfer in ownership of the Petition Area. 	There was no change termination or transfer of any items listed to the Petition Area.
11	Enforcement of the conditions of the SP shall be pursuant to the Rules of the Planning Commission, including the issuance of an order to show cause as to the reason the SP should not be revoked if the Planning Commission has reason to believe that there has been a failure to perform the conditions herein.	No comment.
12	If the PV array creates a hazardous condition for pilots or motorists, the facility operator shall immediately mitigate the hazard upon notification by the DOT, Airports Division, or the FAA.	There have been no notifications from DOT, Airports or FAA.

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13	If required to mitigate visual impacts, new landscaping shall be installed and maintained around the Solar Project to screen it when viewed from Aka Road or Koloa Road. The Planning Department shall determine whether additional landscape screening is necessary and the degree at which it is provided.	As discussed in the permit hearings AES maintained a vegetative screening barrier around the site such that it is not visible from any major roads. There have been no complaints and we have a vegetative screening installed so there is no visibility to our site from any major roads.
14	In the event that historic resources, including human skeletal remains, structural remains, cultural deposits, artifacts, sand deposits, or sink holes, are identified during demolition and/or construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD and Kaua 'i Island Burial Council, as applicable, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the facility, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.	There have been no significant findings at the project.
15	The Applicant shall comply with the requirements of the State Department of Health, the County's Fire Department, the Department of Water, and the Department of Public Works, as well as any other applicable government agencies.	AES is in compliance with all listed governmental agencies.
16	The Applicant shall develop and utilize Best Management Practices (BMP's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.	AES is in compliance with this condition.
17	The Applicant shall develop and operate the facility, including the implementation of measures to mitigate potential impacts of the Project, in substantial compliance with the representations made to the Planning Commission and the LUC as reflected in this Decision and Order. Such mitigation measures include, but are not limited to, the use of temporary and pennant BMPs to ensure that the development and operation of the facility do not result in an increase in storm water runoff that adversely impacts downstream properties. Failure to so develop the Petition Area may result in revocation of the SP.	AES is operating in substantial compliance with the representations made to the Planning Commission and the LUC as reflected in this Decision and Order.

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18	To the extent possible within the confines of union requirements and applicable prohibitions against discrimination in employment, the Applicant shall seek to hire Kaua'i contractors, and shall seek to employ residents of Kaua'i in temporary construction and permanent jobs. It is recognized that the applicant may have to employ non-Kaua'i residents for particular skilled jobs where no qualified Kaua'i resident possesses such skills. For the purpose of this condition, the Commission shall relieve the applicant of this requirement if the applicant is subjected to anti-competitive restraints on trade or other monopolistic practice.	To the extent possible, AES hires and uses local Kauai residents for the operation of the project.
19	The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the project, such as Leadership in Energy and Environmental Design (LEED) standards or another comparable state approved, nationally recognized, and consensus-based guideline, standard, or system, and strategies, which may include but is not limited to recycling, natural lighting, extensive landscaping, solar panels, low-energy fixtures, low energy lighting and other similar methods and techniques. All such proposals shall be reflected on the plans submitted for building permit review.	Not applicable to our project.
20	The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts the project may create, or to revoke the permits through the proper procedures should conditions of approval not be complied with or be violated.	No comment.
21	The Applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agencies.	No comment.
22	As recommended by the State Office of Planning the Applicant shall develop an endangered species awareness training module, which shall include all potential endangered species that may frequent the Petition area. The County shall receive a copy of the training module materials before utilization.	See above answer to #6.
23	As recommended by the State office of Planning, Applicant shall ensure all construction workers and solar facility employees shall undergo endangered species awareness training prior to starting work.	See above answer to #6.

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24.	Prior to building permit submittal, the Applicant shall hold a public meeting for residents in the areas of Lawa'i, Oma'o, Koloa, Kalaheo and Po'ipu to review the construction plans for the Solar Project to solicit input and mitigate where possible concerns raised.	AES held a public meeting at the Koloa Neighborhood Center on Thursday January 25, 2018 and notified local area residences.
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GUARANTY

This **GUARANTY** (this "Guaranty"), dated as of May 28, 2019, is executed by **AES DISTRIBUTED ENERGY, INC.**, a Delaware corporation, as guarantor (the "Guarantor"), in favor of **McBRYDE SUGAR COMPANY, LLC**, a Delaware limited liability company (together with its successors and assigns, "Recipient").

RECITALS

WHEREAS, pursuant to the terms of the Grant of Easements Agreement, dated as of June 30, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement"), by and between the Recipient and the Guaranteed Party (as defined herein), the Recipient has granted easements over portions of the Master Parcel to the Guaranteed Party in accordance with the terms set forth therein;

WHEREAS, the Guaranteed Party is an affiliate of the Guarantor and the Guarantor is expected to receive substantial direct and indirect benefits from the transactions contemplated by the Agreement (which benefits are hereby acknowledged);

WHEREAS, pursuant to Section 5.6 of the Agreement, Guaranteed Party is obligated to cause to be delivered to Recipient a guaranty from Guarantor of Guaranteed Party's Guaranteed Obligations (as defined herein) to Recipient on or prior to the beginning of the Operational Period; and

WHEREAS, Guarantor has agreed to guaranty the due and punctual performance by the Guaranteed Party of its Guaranteed Obligations;

NOW, THEREFORE, the Guarantor hereby agrees as follows:

Section 1. Definitions. Capitalized terms used herein and not defined herein shall have the respective meanings assigned thereto in the Agreement. In addition:

"Business Day" means a day other than Saturday, Sunday or any day on which banks located in New York, New York are authorized or obligated to close.

"Guaranteed Obligations" means all present and future liabilities and obligations of the Guaranteed Party's Removal Obligations in accordance with the Agreement, set forth in Section 5.6 of the Agreement.

"Guaranteed Party" means AES LAWA'I SOLAR, LLC, a Delaware limited liability company.

"Master Parcel" shall have the meaning set forth in the Agreement.

"Operational Period" shall have the meaning set forth in the Agreement.

"Removal Obligations" shall have the meaning set forth in the Agreement.

Section 2. Guaranty of Guaranteed Obligations.

(a) The Guarantor hereby guarantees, not merely as a surety to Recipient and its successors and assigns, the full and punctual payment and performance by the Guaranteed Party of the

Guaranteed Obligations. This Guaranty is an absolute, unconditional, irrevocable and continuing guaranty of the full and punctual performance of all of the Guaranteed Obligations of the Guaranteed Party and is in no way conditioned upon any requirement that Recipient first attempt to collect any amounts owing by the Guaranteed Party to the Recipient from any other Person. Should the Guaranteed Party default in the payment or performance of any of its Guaranteed Obligations, Recipient (or its assigns) may require the immediate performance thereof by the Guarantor and require payment of any Guaranteed Obligations that are then due and payable to the Recipient to be paid by the Guarantor, without other demand or notice of any nature (other than as expressly provided herein), all of which are hereby expressly waived by the Guarantor. All payments by Guarantor shall be made directly by Guarantor to the Recipient within five (5) Business Days of receipt in accordance with this Guaranty of written notice from the Recipient.

(b) Notwithstanding anything to the contrary set forth in this Guaranty, the Guarantor's aggregate liability under this Guaranty in respect of the Guaranteed Obligations shall not exceed two million one hundred thousand dollars (\$2,100,000.00).

Section 3. Guarantor's Further Agreements to Pay. The Guarantor further agrees, to pay to Recipient, forthwith upon demand in funds immediately available to Recipient, all documented reasonable costs and expenses (including court costs and reasonable legal fees and expenses) incurred or expended by Recipient in connection with the enforcement of this Guaranty.

Section 4. Waivers by Guarantor. The Guarantor waives notice of acceptance of this Guaranty, notice of any action taken or omitted by Recipient (or its assigns) in reliance on this Guaranty, and any requirement that Recipient (or its assigns) be diligent or prompt in making demands under this Guaranty, giving notice of any Event of Default, other default or omission by the Guaranteed Party or asserting any other rights of Recipient under this Guaranty. The Guarantor also irrevocably waives all defenses it may have (now or in the future) (i) that at any time may be available in respect of the Guaranteed Obligations by virtue of any statute of limitations, valuation, stay, moratorium law or other similar law now or hereafter in effect or (ii) that arise under the law of suretyship. Guarantor agrees that the validity and enforceability of this Guaranty shall not be impaired or affected by any of the following:

(a) any extension, modification or renewal of, or indulgence with respect to, or substitutions for, the Guaranteed Obligations or any part thereof or any agreement relating thereto at any time;

(b) any failure or omission to enforce any right, power or remedy with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto;

(c) any waiver of any right, power or remedy or of any Event of Default or default with respect to the Guaranteed Obligations or any part thereof or any agreement relating thereto;

(d) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of any other obligation of any person or entity with respect to the Guaranteed Obligations or any part thereof;

(e) the enforceability, validity or illegality of the Guaranteed Obligations or any part thereof or the genuineness, enforceability, validity or illegality of any agreement relating thereto or with respect to the Guaranteed Obligations or any part thereof;

(f) the existence of any claim, setoff or other rights which the Guarantor may have at any time against the Guaranteed Party in connection herewith or with any unrelated transaction; or

(g) any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations;

all whether or not the Guarantor shall have had notice or knowledge of any act or omission referred to in the foregoing clauses (a) through (g) of this Section 4.

Section 5. Unenforceability of Guaranteed Obligations Against Guaranteed Parties. Notwithstanding (a) any change of ownership of the Guaranteed Party or the insolvency, bankruptcy or any other change in the legal status of the Guaranteed Party; (b) the change in or the imposition of any law, decree, regulation or other governmental act which does or might impair, delay or in any way affect the validity, enforceability or the payment when due of the Guaranteed Obligations; or (c) the failure of the Guaranteed Party or the Guarantor to maintain in full force, validity or effect or to obtain or renew when required all governmental and other approvals, licenses or consents required in connection with the Guaranteed Obligations or this Guaranty, or to take any other action required in connection with the performance of all obligations pursuant to the Guaranteed Obligations or this Guaranty, this Guaranty shall nevertheless be binding on the Guarantor.

Section 6. Representations and Warranties. The Guarantor hereby represents and warrants to Recipient that:

(a) Existence and Power. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has all requisite power and authority to execute and deliver, and to perform, all of its obligations under this Guaranty.

(b) No Conflict. The execution, delivery and performance by the Guarantor of this Guaranty, are within the powers granted by the Guarantor's organizational documents, have been duly authorized by all necessary action, do not contravene or violate (i) its organizational documents, (ii) any law, rule or regulation applicable to it, (iii) any restrictions under any agreement, contract or instrument to which it is a party or by which it or any of its property is bound, or (iv) any order, writ, judgment, award, injunction or decree binding on or affecting it or its property. This Guaranty has been duly authorized, executed and delivered by the Guarantor.

(c) Governmental Authorization. No authorization or approval or other action by, and no notice to or filing with, any governmental authority is required for the due execution, delivery and performance by the Guarantor of this Guaranty. No injunction, writ, restraining order or other order of any nature adversely affects the Guarantor's performance of its obligations under this Guaranty.

(d) Binding Effect. This Guaranty constitutes the legal, valid and binding obligations of the Guarantor enforceable against the Guarantor in accordance with its terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws relating to or limiting creditors' rights generally and by general principles of equity. There are no conditions precedent to the effectiveness of this Guaranty that have not been satisfied or waived.

Section 7. Subrogation; Subordination. Notwithstanding anything to the contrary contained herein, until the Guaranteed Obligations are paid in full, the Guarantor: (a) will not enforce or otherwise exercise any right of subrogation to any of the rights of the Recipient against the Guaranteed Party, (b) hereby waives all rights of subrogation to the claims of Recipient against the Guaranteed Party and all contractual, statutory or legal or equitable rights of contribution, reimbursement, indemnification

and similar rights and "claims" (as that term is defined in the bankruptcy code) which the Guarantor might now have or hereafter acquire against the Guaranteed Party that arise from the existence or performance of the Guarantor's obligations hereunder, and (c) will not claim any setoff, recoupment or counterclaim against the Guaranteed Party in respect of any liability of the Guarantor to such Guaranteed Party. The payment of any amounts due with respect to any indebtedness of the Guaranteed Party now or hereafter owed to the Guarantor is hereby subordinated to the prior payment in full of all of the Guaranteed Obligations in the manner hereinafter set forth. The Guarantor agrees that, after the occurrence and during the continuance of any default in the payment or performance of any of the Guaranteed Obligations, the Guarantor will not demand, sue for or otherwise attempt to collect any such indebtedness of such Guaranteed Party to the Guarantor until all of the Guaranteed Obligations shall have been paid and performed in full. If, notwithstanding the foregoing sentence, the Guarantor shall collect, enforce or receive any amounts in respect of such indebtedness while any Guaranteed Obligations are still unperformed or outstanding after the occurrence and during the continuance of any default in the payment or performance of such Guaranteed Obligations, such amounts shall be collected, enforced and received by the Guarantor as trustee for Recipient (and its assigns) and be paid over to Recipient (or its assigns) on account of the Guaranteed Obligations without affecting in any manner the liability of the Guarantor under the other provisions of this Guaranty. The provisions of this Section 7 shall be supplemental to and not in derogation of any rights and remedies of Recipient under any separate subordination agreement which Recipient may at any time and from time to time enter into with the Guarantor.

Section 8. Termination of Guaranty. The Guarantor's obligations hereunder shall continue in full force and effect until the earlier of (i) the date on which all Guaranteed Obligations shall have been satisfied by indefeasible payment in full, or (ii) the date on which this Guaranty is terminated and released in by a termination of guaranty signed by Recipient and the Guarantor or their respective and approved successors and assigns, provided, that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time payment or other satisfaction of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the bankruptcy, insolvency, or reorganization of the Guaranteed Party or otherwise, as though such payment had not been made or other satisfaction occurred, whether or not Recipient (or its assigns) is in possession of this Guaranty. No invalidity, irregularity or unenforceability by reason of the bankruptcy law or any insolvency or other similar law, or any law or order of any government or agency thereof purporting to reduce, amend or otherwise affect the Guaranteed Obligations shall impair, affect, be a defense to or claim against the obligations of the Guarantor under this Guaranty.

Section 9. Further Assurances. Guarantor agrees to use commercially reasonable efforts to do all such things and execute all such documents as Recipient may reasonably consider necessary or desirable to give full effect to this Guaranty and to preserve the rights and powers of Recipient hereunder. Recipient agrees to do all such things and execute all such documents as Guarantor may reasonably consider necessary or desirable to give full effect to the termination of this Guaranty, subject to and in accordance with the terms hereof including Section 8.

Section 10. Successors and Assigns. This Guaranty shall be binding upon the Guarantor, its successors and permitted assigns, and shall inure to the benefit of and be enforceable by Recipient and its successors and assigns. The Guarantor may not assign or transfer any of its obligations hereunder without the prior written consent of Recipient.

Section 11. Amendments. No amendment or waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom shall be effective unless the same shall be in writing and signed by Recipient and the Guarantor.

Section 12. No Waiver. No course of dealing or failure of and no delay by Recipient to enforce strictly any term, right or condition of this Guaranty shall be construed as a waiver of such term, right or condition. No waiver of any term, right or condition of this Guaranty shall operate as a waiver of any other term, right or condition, nor shall any single or partial exercise of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

Section 13. Notices. All notices and other communications provided for hereunder shall be made in writing (including communication by electronic mail) and shall be addressed as follows: if to the Guarantor, at the address set forth beneath its signature hereto, and if to Recipient, at the address designated under Section 12.1 of the Agreement or at such other addresses as each of the Guarantor or Recipient may designate in writing to the other. Each such notice or other communication shall be effective if given by electronic mail, upon telephone confirmation of the receipt thereof, if given by mail, three (3) Business Days after the time such communication is deposited in the mail with first class postage prepaid or if given by any other means, when received at the address specified in this Section 12.

Section 14. GOVERNING LAW; JURY WAIVER.

(a) **THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF HAWAII.**

(b) **EACH OF THE PARTIES HERETO WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING DIRECTLY OR INDIRECTLY OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY.**

Section 15. CHOICE OF FORUM; SERVICE OF PROCESS. Recipient may bring any action or proceeding to enforce this Guaranty, or any action or proceeding arising out of this Guaranty, in any court or courts of the State of Hawaii or the United States District Court for the District of Hawaii. If Recipient commences such an action in a court located in the State of Hawaii, or the United States District Court for the District of Hawaii, Guarantor hereby agrees that Guarantor will submit and does hereby irrevocably submit to the personal jurisdiction of such courts; if served by mail will acknowledge receipt of a copy of the summons and complaint within the statutory time limit and in the manner set forth on the notice and summons; and will not attempt to have such action dismissed, abated, or transferred on the ground of forum non conveniens or similar grounds; provided, however, that nothing contained herein shall prohibit Guarantor from seeking, by appropriate motion, to remove an action brought in a Hawaii state court to the United States District Court for the District of Hawaii. If such action is so removed, however, Guarantor shall not seek to transfer such action to any other district nor shall Guarantor seek to transfer to any other district any action which Recipient originally commenced in the United States District Court for the District of Hawaii. Any action or proceeding brought by Guarantor arising out of this Guaranty shall be brought solely in a court of competent jurisdiction located in the State of Hawaii or in the United States District Court for the District of Hawaii.

Section 16. Entire Agreement. This Guaranty constitutes the entire agreement of the Guarantor with respect to the matters set forth herein. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by law or any other agreement.

Section 17. Severability. The provisions of this Guaranty are severable, and in any action or proceeding involving any state corporate law, or any state or federal bankruptcy, insolvency,

reorganization or other law affecting the rights of creditors generally, if the obligations of the Guarantor hereunder would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of the Guarantor's liability under this Guaranty, then, notwithstanding any other provision of this Guaranty to the contrary, the amount of such liability shall, without any further action by the Guarantor or Recipient, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding. Any provisions of this Guaranty which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.


Section 18. Section References. Unless otherwise specified, references herein to "Section" shall mean a reference to sections of this Guaranty.

Section 19. Headings. The headings of this Guaranty are for convenience only, and shall be deemed not to be a part of this Guaranty nor to affect the interpretation hereof.

* * * *

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed and delivered as of the date first above written.

AES DISTRIBUTED ENERGY, INC.,
as Guarantor

By: 
Name: WOODY RUBIN
Title: PRESIDENT

Address: 4875 Pearl East Circle, Suite 200
Boulder, CO 80301
Attn: Legal Department
DELegalNotices@aes.com

*Signature Page to
AES DE Guaranty*

Acknowledged and Accepted
as of the date first above written:

McBRYDE SUGAR COMPANY, LLC, SERIES R

By : **ALEXANDER & BALDWIN, LLC, SERIES R** *M.S.J.*

By: 

Name: **NELSON N.S. CHUN**

Title: **SENIOR VICE PRESIDENT**

*Signature Page to
AES DE Guaranty*