

**KAUAI ISLAND UTILITY COOPERATIVE**  
**POLICY NO. 28**  
(Reviewed 04/18/2017)

**OFFERS TO ACQUIRE COOPERATIVE'S ASSETS**

**PURPOSE OF POLICY:**

To recognize and prepare for the possibility that the Cooperative could receive an offer to acquire all or a substantial portion of the Cooperative's assets, whether by purchase, merger, lease or otherwise, and to set forth the policy by which the Board will perform due diligence in receiving such offers.

**POLICY CONTENT:**

A. Policy Statement:

In order for the Board of Directors to carry out their duties to the Cooperative, minimize the costs and disruption to the Cooperative involved in undertaking repeated due diligence reviews, and abide by the articles of incorporation, bylaws, and any applicable laws or regulations, the Board shall act in the best interests of the Cooperative and its membership and establish the procedures within this policy to govern the Cooperative's receipt, consideration and final action on an offer to purchase all or parts of the Cooperative's assets.

B. Scope:

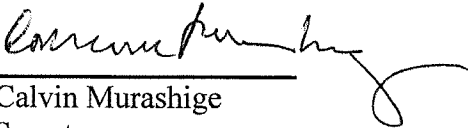
This policy is designed to provide guidance for the Cooperative's Board of Directors and shall not be construed to create rights in the Cooperative's members, a party submitting an offer to the Cooperative, or any other entity.

C. Qualifying Offer:

1. If the Cooperative receives an offer and such offer is not a Qualifying Offer (as defined in Paragraph C (3) below, it shall be considered an "Inquiry." The recipient of any Inquiry shall notify the person, corporation, or entity submitting the inquiry that, under the terms of this policy, the Board of Directors shall not consider an offer unless it qualifies as a Qualifying Offer, as defined in Paragraph C (3).
2. The CEO of the Cooperative shall notify the Board of any Inquiry or Qualifying Offer immediately upon notice thereof.
3. The Board of Directors shall consider only offers that meet all of the criteria listed in this paragraph, in which case it shall be considered a Qualifying Offer. If at any time it is determined that an offer does not meet all of the criteria in this paragraph, it shall be rejected by the Board, and the person, corporation, or other entity submitting the offer (the "Interested Party") shall be notified of the rejection.

- a. A Qualifying Offer must be a written offer, containing the acquisition price and all other material terms, which is binding upon the Interested Party until a specified date or until rejected;
  - b. A Qualifying Offer must specify the date on which it will expire if not accepted by the Cooperative;
  - c. A Qualifying Offer must contain the names, addresses, and telephone numbers of persons representing the Interested Party with whom the Board may communicate and from whom it may secure authoritative answers regarding the Qualifying Offer;
  - d. In light of the expense in responding to a Qualifying Offer, a Qualifying Offer must be accompanied with an Escrow Agreement acceptable to the Cooperative, which Agreement shall require the Interested Party to deposit an amount equal to at least 2% of Total Utility Plant in an escrow account. The terms of the Escrow Agreement shall provide that the principal amount of the deposit may be drawn on by the Cooperative to:
    1. Pay for all costs (including accounting, engineering and legal) of studies, reviews, analyses, and appraisals by and for the Cooperative in its evaluation of the Qualifying Offer; and
    2. Pay costs incurred by the Cooperative in seeking regulatory approvals.
  - e. If the offer is withdrawn or rejected, any remaining balance in the escrow account shall be paid to the Interested Party when the Board certifies that all costs set forth in this policy have been paid in full.
  - f. A Qualifying Offer must contain an agreement by the Interested Party not to issue press releases or discuss the Qualifying Offer with the media without prior written consent of the Cooperative, and to refrain from issuing misleading statements or advertising; and
4. Upon a determination by the Board that it has received a Qualifying Offer, the Board may pursue continued due diligence in entertaining the Qualifying Offer in consultation with the NRECA policy, consultants, the Rural Utilities Service, and counsel as it may deem fit.

Adopted on this 18th day of April, 2017.

  
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Calvin Murashige  
Secretary

Reviewed: 04/18/2017

Reviewed: 06/30/2015

Adopted: 11/26/2013