

**TESTIMONY TO THE
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
ON
SB 2630 SD2 RELATING TO PETROLEUM INDUSTRY REPORTING
Tuesday, March 18, 2008 at 9 a.m.
State Capitol, Room 312**

**By
Robert F. Maynard
President and Chief Executive Officer
Aloha Petroleum, Ltd.**

Chair Morita and Members of the House Committee on Energy and Environmental Protection, I am Robert F. Maynard, President and Chief Executive Officer of Aloha Petroleum, Ltd.

Aloha Petroleum, Ltd. strongly opposes that portion of Senate Bill 2630, SD2, which requires the PUC to publish specific proprietary and confidential information it receives from individual companies in the petroleum industry.

SB 2630, SD2 effectively eliminates the confidentiality of certain proprietary company specific information filed with the PUC, with the ultimate intent, we believe, to force disclosure of all confidential information under the Act. The forced release of proprietary and confidential information to the general public serves no purpose other than to cause competitive harm to stakeholders and presents the risk of causing market disruptions within the industry, while in no way serving the stated objective of providing consumers with a better understanding of the Hawaii gasoline marketplace.

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The responsibility for the analysis of the voluminous and complex data filed with the PUC rightly belongs with that agency and its consultants, not the general public. Because the complexity and volume of data is so great, the objectives of transparency can only be achieved through careful professional analysis by experts such as the PUC and its consultants. Exposing this complex data to public scrutiny will run a significant risk of misinterpretation and even misuse. Moreover, in some cases, the data will provide confidential proprietary information to competitors thereby disrupting normal market relationships and creating unfair competitive advantages and disadvantages.

Hundreds of thousands of Hawaii taxpayer dollars have already been spent on an independent consultant, who has unrestricted access to the unsealed reports and data filed with the PUC and who conducted thorough studies of Hawaii's petroleum market. The PUC's consultant (as did all of the State's other previous consultants) found no evidence the petroleum industry in Hawaii is broken or that market participants realize excessive profits.

Aloha Petroleum, Ltd. has no objection to the inclusion of the "class of trade" distinctions provided in this bill, but we do vigorously object to this harmful disclosure requirement.

Thank you for the opportunity to testify in opposition to Senate Bill 2630, SD2.

Janice Lehner

From: Brian Barbata [barbatab001@hawaii.rr.com]

Sent: Sunday, March 16, 2008 4:48 PM

To: EEPtestimony

Subject: TESTIMONY ON SB 2630

Please make 8 copies of this testimony available to the members of the Energy and Environmental Protection Committee for the hearing at 9:00 on March 18, 2008 in Room 312.

TESTIMONY OF BRIAN J. BARBATA

President of

ISLAND PETROLEUM, INC. (Molokai)

SENER PETROLEUM, Inc, (Kauai)

TO THE HOUSE COMMITTEE ON
ENERGY AND ENVIRONMENTAL PROTECTION
TUESDAY, MARCH 18, 2008 at 9:00 AM
MEASURE: S.B. No. 2630 S.D. 1
RELATING TO PETROLEUM INDUSTRY MONITORING.

Chair Morita, Co-Chair Carroll and Members of the Committee:

I oppose this Bill for the following reasons:

1. **“PRICING METHODS”**: The Bill and the report forwarding it to Senate President Hanabusa refer to the Senate and the PUC’s interest in the petroleum industry’s “pricing methods”. I submit to you that very little, if anything, in SB 2630 SD1 (or PIMAR) relates to “pricing methods”. Instead, in a misguided effort to understand the economics of a complex industry, this modification of PIMAR simply attempts to publicize more pointless data about costs and prices to people who have no hope of making any intelligent use of it. **DISTRIBUTING CONFIDENTIAL, DETAILED COST AND PRICING INFORMATION PUBLICLY WILL NEVER ACHIEVE AN OBJECTIVE OF DETERMINING “PRICING METHODS”**. Pricing methods vary from marketer to marketer, across a broad range of business types. They cannot be backed into from costs and prices, no matter how detailed and voluminous.
2. **FAIR PRICING**: It is often stated by some legislators that the objective of PIMAR is to give the Legislature and the public the ability to understand whether gasoline prices in Hawaii are “fair”. This is a ridiculous statement of an unachievable objective. What is “fairness”? No one, not even an industry expert, can assess this. Comparing prices, costs or the profit margins of local companies mainland companies can not answer that question (where do you get the comparable mainland data?). Certainly, a determination of “fairness” is WAY beyond the abilities of the legislature or the public.

A few have made much of the word “oligopoly”, as if it was “monopoly”. An oligopoly is, in fact, normal in a small market. There are lots of them. Whether any competitors in any market of any size are colluding is another matter entirely. Oligopoly and unfair pricing do not

automatically go together.

We all know the objectives of Gas Cap, PIMAR and other proposals have been twofold. One is to demonstrate to constituents that legislators are sensitive to the price of gasoline. The other is to support the extreme case for government price controls. Are either of these worthy of the expense and disruption that has plagued the legislature, consumers and petroleum marketers for over a decade?

3. **PIMAR REPORTING:** PIMAR was recently modified by the PUC to require small marketers, such as ourselves, to report information on the details of overhead and marketing costs. Presumably, this is so users of PIMAR data can subtract these costs from existing data and come up with our net profitability. Again, this serves no useful purpose. Is someone going to look at these profitability calculations from month to month and derive from that whether we are making too much money? Will that result in an order to reduce our prices or pay fines? If we lose money, do we get a check back from the State? The disclosure of such information is a huge additional burden, and is tantamount to the disclosure of our tax returns, which are generally protected unless a need is demonstrated in a court of law. We have hired an additional manager to deal with PIMAR already. This latest requirement, plus SB 2630 SD1, is totally unnecessary and unwarranted for a small business such as ours which has never been accused of ANY wrongdoing, and in fact has been a model community citizen. In addition, there are huge differences between the way a large public company and small, private, family-owned companies do business and handle business risk and competition. The likelihood that a small marketer in Hawaii is engaged in price fixing is too far-fetched to even comment on.

PIMAR is now funded at \$1.2 million per year. That budget will inevitably increase, so in five years, the State will likely have spent something like \$7 million on it, with nothing to show in return. It is hard to imagine PIMAR resulting in another ill-begotten attempt at price regulation. If PIMAR leads to anything, it might be another silly suit against another major oil company for price fixing. As before, huge sums of money will go to attorneys who gladly pursue such vacant complaints on behalf of naïve government clients against “evil oil”. Litigation is always there as an option for the State, should any business participate in unlawful pricing practices. PIMAR does nothing to enhance this option.

4. **CONFIDENTIALITY:** SB 2630 SD1 effectively drops the barrier to the distribution of confidential, company-specific, competitive information and directs the PUC to make it available to “the public”. The “public” includes competitors. Can you imagine the HAVOC this will cause, both through cavalier accusations by vindictive citizens, and in the fuel markets? Certain legislators, frustrated with the PUC combining confidential data to avoid divulging specific company information, seek to expose every petroleum businesses’ information in a bizarre attempt to find out exactly who is doing what. In other words, a witch hunt. NO reasonable objective has ever been stated for such a thing. Aside from the fact that this is an incredibly stupid message to be sending the world about the already abysmal reputation of Hawaii as a place to do business (even China affords businesses more protection!), it is clearly anti-competitive. If I do business in a defined market where there are only one or two other competitors, the publication of this information immediately broadcasts my competitive capabilities and position. If I am strong, others will not offer against me. If I am weak, they will only price as low as they have to.

Competition is immediately reduced. A stronger competitor might even track the economics of weaker competitors and put them out of business. Buyers of petroleum products lose out because offers will be based on the highest prices competitors know they have to offer, rather on their assumptions about what other competitors might do. And, as competitors disappear, the market will be served by the dominant survivors, who will be free to charge whatever they want. Monopolies may well be created over time. There are good reasons for keeping competitive economic information and practices confidential.

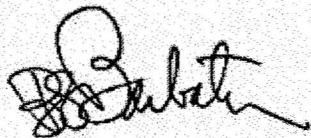
Ultimately, you have to ask yourselves, "Is this going to increase or decrease competition and is it going to increase or decrease the costs of doing business in Hawaii's petroleum industry?" If there is the potential to decrease competition and increase costs, then you have truly not served your constituency.

5. **GAS CAP LESSONS:** As with the infamous "Gas Cap" law, PIMAR represents a bass-ackwards approach. Past governors and legislatures recognized that the first order of business to deal with suspicions of petroleum industry pricing was to have an expert study and report on the matter. Obviously, this sets the groundwork for the possible future collection of information, not vice-versa. This was done twice in recent years, and several times in the past two decades, and nothing supported the concerns or claims of the State. However, a few legislators did not like that result, so decided to simply ignore the consultants' recommendations (at a cost of hundreds of thousands of dollars). And so, this fishing expedition continued, based on uninformed personal opinion and on the opinions and vindictiveness of such small activist groups as Citizens Against Price Gouging (often discredited in legislative committee hearings), an organization of something like 10 members. In fact, much of the "support" referenced during the Gas Cap quest was from the self-appointed head of a small gas station dealer group in the Northwest! That is how far afield some have reached to try to justify the waste of your time and State funds in an effort to prove themselves "right" with respect to gasoline prices and the "evil" petroleum industry.

To quote Sen. Menor's Floor remarks in support of Gas Cap: "*Mr. Hosie believes that the Report advocates implausible and ineffective remedies. For example, the Report recommends better information gathering and monitoring of the oil industry by the State. However, this approach would only confirm what we already know --- that we are paying gasoline prices that are too high*". Apparently, even Sen. Menor considered further data collection "implausible and ineffective". That being the case, why keep beating this dead horse?

I urge you to put a stop to this foolishness and not pass SB 2630 SD1 out of your Committee. With no reasonable objective in sight, I ask that you modify this Bill to suspend PIMAR reporting and free up \$1.2 million per year for things that can actually affect the well-being of the people of this State.

Respectfully submitted,



House Committee on Energy & Environmental Protection
9:00am Tuesday, March 18, 2008
Room 312

SB2630, SD2 Relating to Petroleum Industry Reporting

Mid Pac Petroleum, LLC is a locally owned mid-sized petroleum marketing and distribution company in Hawaii. Most of our product is sold under the 76 brand of fuels and we have approximately 120 local employees.

Mid Pac strongly opposes SB 2630, SD2. Although we have never felt that the Petroleum Industry Monitoring and Reporting Act ("PIMAR") was a good idea, we ultimately concluded that it was yet another expensive regulation (adding to the cost of fuel in Hawaii), that could nevertheless be survived if, and only if, the confidentiality of the data was strictly maintained. Significant time and effort were expended between all parties in negotiating the specific language of the existing law and in working with the PUC to develop appropriate protective orders to ensure the confidentiality of the data.

As the PUC has seen over the past year, the industry data is detailed, complex and competitively sensitive. The only groups that have any hope of understanding that complexity and using the data would be the PUC (which has full access), and the industry competitors, whose use could be anti-competitive and clearly harmful both to the other companies and ultimately the consumer. The confidentiality of the individual company information must be maintained.

Thank you for the opportunity to testify in opposition to SB 2630, SD2.



Western States Petroleum Association

Tuesday, March 18, 2008

9:00 a.m.

**House Committee on Energy & Environmental Protection
Conference Room 312**

SB 2630, SD2 - Relating to the Petroleum Industry Reporting

Western States Petroleum Association is a non-profit trade association representing a broad spectrum of petroleum industry companies in Hawaii and five other western states. We are testifying in opposition to ***SB 2630, SD2***.

Local petroleum companies are understandably concerned that their competitively sensitive information be treated as such, and that the state's reporting requirements do not unwittingly result in a disclosure of competitively sensitive information that could lead to market distortions and negatively impact the companies and consumers.

For example when companies engage in "sealed bidding," bidders must have a keen knowledge of their own direct and indirect costs, but if they had access to the same information for their competitors it could negate the effectiveness of the bidding process to the detriment of buyers.

Thus far under the Petroleum Industry Monitoring and Reporting Act ("PIMAR"), local petroleum companies have submitted information under protective orders negotiated with the PUC. In this manner, companies can be assured that information that they provide in response to PIMAR cannot be used by competitors to gain an advantage over them in the marketplace.

Under the PIMAR, the local petroleum companies submit volumes of information on at least 23 different aspects on their business activities, to the Public Utilities Commission ("PUC"). Providing this information on weekly and monthly reports consumes a considerable amount of time and resources. The PUC has the authority to review the information and provide comments, conclusions and analysis, while preserving the confidentiality of competitively sensitive and proprietary information. Based on the report issued to the legislature by the PUC, it appears the information has been useful in helping the PUC understand the detail and complexity of the local petroleum industry, that, when overlooked, can lead to false perceptions and conclusions.

In California, petroleum companies are required to submit at least 17 reports under that state's Petroleum Industry Information Reporting Act (PIIRA). PIIRA includes extensive protection for company specific confidential information.

The Department of Business, Economic Development & Tourism retained consultants to review the entire unsealed record of the state's anti-trust lawsuit against members of the petroleum industry and those consultants concluded that the "market isn't broken." If the purpose of requiring additional public disclosure of industry information is to assess whether anti-competitive behavior is being conducted, such a review has already been done by the state's own experts.

In conclusion, Hawaii's gasoline market has been the subject of numerous government and independent third-party studies that have identified a number of reasons for the high cost of petroleum products in Hawaii, including crude oil costs, long distances from crude oil sources, a small market, rent controls on service stations and high taxes. We are opposed to measures that might tend to have the consequence of being anti-competitive and, anti-consumer.

Thank you for the opportunity to testify in opposition to *SB 2630, SD2*.