
A BILL FOR AN ACT

RELATING TO THE PUBLIC UTILITIES COMMISSION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the public utilities
2 commission is allowed to authorize a temporary or interim
3 increase in public utility rates if the public utilities
4 commission cannot issue a final decision before the nine months
5 after a contested case hearing, as provided by statute. While
6 this allows that public utilities commission more time to
7 deliberate over the potential effects of a rate increase, the
8 lack of any deadline also allows "interim" rate increases to
9 have the effect of approved rate increases.

10 The purpose of this Act is to impose a hard deadline after
11 an interim rate increase is issued to prevent the perpetuation
12 of "interim" rate increases.

13 SECTION 2. Section 269-16, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§269-16 Regulation of utility rates; ratemaking**
16 **procedures.** (a) All rates, fares, charges, classifications,
17 schedules, rules, and practices made, charged, or observed by
18 any public utility or by two or more public utilities jointly



1 shall be just and reasonable and shall be filed with the public
2 utilities commission. The rates, fares, classifications,
3 charges, and rules of every public utility shall be published by
4 the public utility in such manner as the public utilities
5 commission may require, and copies shall be furnished to any
6 person on request.

7 To the extent the contested case proceedings referred to in
8 chapter 91 are required in any rate proceeding to ensure
9 fairness and to provide due process to parties that may be
10 affected by rates approved by the commission, the evidentiary
11 hearings shall be conducted expeditiously and shall be conducted
12 as a part of the ratemaking proceeding.

13 (b) No rate, fare, charge, classification, schedule, rule,
14 or practice, other than one established pursuant to an automatic
15 rate adjustment clause previously approved by the commission,
16 shall be established, abandoned, modified, or departed from by
17 any public utility, except after thirty days' notice to the
18 commission as prescribed in section 269-12(b), and prior
19 approval by the commission for any increases in rates, fares, or
20 charges. The commission, in its discretion and for good cause
21 shown, may allow any rate, fare, charge, classification,
22 schedule, rule, or practice to be established, abandoned,



1 modified, or departed from upon notice less than that provided
2 for in section 269-12(b). A contested case hearing shall be
3 held in connection with any increase in rates, and the hearing
4 shall be preceded by a public hearing as prescribed in section
5 269-12(c), at which the consumers or patrons of the public
6 utility may present testimony to the commission concerning the
7 increase. The commission, upon notice to the public utility,
8 may:

- 9 (1) Suspend the operation of all or any part of the
10 proposed rate, fare, charge, classification, schedule,
11 rule, or practice or any proposed abandonment or
12 modification thereof or departure therefrom;
- 13 (2) After a hearing, by order:
- 14 (A) Regulate, fix, and change all such rates, fares,
15 charges, classifications, schedules, rules, and
16 practices so that the same shall be just and
17 reasonable;
- 18 (B) Prohibit rebates and unreasonable discrimination
19 between localities or between users or consumers
20 under substantially similar conditions;



- 1 (C) Regulate the manner in which the property of
- 2 every public utility is operated with reference
- 3 to the safety and accommodation of the public;
- 4 (D) Prescribe its form and method of keeping
- 5 accounts, books, and records, and its accounting
- 6 system;
- 7 (E) Regulate the return upon its public utility
- 8 property;
- 9 (F) Regulate the incurring of indebtedness relating
- 10 to its public utility business; and
- 11 (G) Regulate its financial transactions; and
- 12 (3) Do all things that are necessary and in the exercise
- 13 of the commission's power and jurisdiction, all of
- 14 which as so ordered, regulated, fixed, and changed are
- 15 just and reasonable, and provide a fair return on the
- 16 property of the utility actually used or useful for
- 17 public utility purposes.
- 18 (c) The commission may in its discretion, after public
- 19 hearing and upon showing by a public utility of probable
- 20 entitlement and financial need, authorize temporary increases in
- 21 rates, fares, and charges; provided that the commission shall
- 22 require by order the public utility to return, in the form of an



1 adjustment to rates, fares, or charges to be billed in the
2 future, any amounts with interest, at a rate equal to the rate
3 of return on the public utility's rate base found to be
4 reasonable by the commission, received by reason of continued
5 operation that are in excess of the rates, fares, or charges
6 finally determined to be just and reasonable by the commission.
7 Interest on any excess shall commence as of the date that any
8 rate, fare, or charge goes into effect that results in the
9 excess and shall continue to accrue on the balance of the excess
10 until returned.

11 (d) The commission shall make every effort to complete its
12 deliberations and issue its decision as expeditiously as
13 possible and before nine months from the date the public utility
14 filed its completed application; provided that in carrying out
15 this mandate, the commission shall require all parties to a
16 proceeding to comply strictly with procedural time schedules
17 that it establishes. If a decision is rendered after the nine-
18 month period, the commission shall report in writing the reasons
19 therefor to the legislature within thirty days after rendering
20 the decision.

21 Notwithstanding subsection (c), if the commission has not
22 issued its final decision on a public utility's rate application



1 within the nine-month period stated in this section, the
2 commission, within one month after the expiration of the nine-
3 month period, shall render an interim decision allowing the
4 increase in rates, fares and charges, if any, to which the
5 commission, based on the evidentiary record before it, believes
6 the public utility is probably entitled. The commission may
7 postpone its interim rate decision for thirty days if the
8 commission considers the evidentiary hearings incomplete. In
9 the event interim rates are made effective, the commission shall
10 require by order the public utility to return, in the form of an
11 adjustment to rates, fares, or charges to be billed in the
12 future, any amounts with interest, at a rate equal to the rate
13 of return on the public utility's rate base found to be
14 reasonable by the commission, received under the interim rates
15 that are in excess of the rates, fares, or charges finally
16 determined to be just and reasonable by the commission.
17 Interest on any excess shall commence as of the date that any
18 rate, fare, or charge goes into effect that results in the
19 excess and shall continue to accrue on the balance of the excess
20 until returned.

21 The nine-month period in this subsection shall begin only
22 after a completed application has been filed with the commission



1 and a copy served on the consumer advocate. The commission
2 shall establish standards concerning the data required to be set
3 forth in the application in order for it to be deemed a
4 completed application. The consumer advocate may, within
5 twenty-one days after receipt, object to the sufficiency of any
6 application, and the commission shall hear and determine any
7 objection within twenty-one days after it is filed. If the
8 commission finds that the objections are without merit, the
9 application shall be deemed to have been completed upon original
10 filing. If the commission finds the application to be
11 incomplete, it shall require the applicant to submit an amended
12 application consistent with its findings, and the nine-month
13 period shall not commence until the amended application is
14 filed.

15 (e) In the event of the issuing of an interim decision on
16 rates, the public utilities commission shall render a final
17 decision on the application for which an interim decision was
18 issued no later than six months after the issuing of the interim
19 decision. Failure to issue a final decision on the matter shall
20 vacate the interim decision as of the end of the six month
21 period established by this subsection. In the event interim
22 rates are vacated, the commission shall require by order the



1 public utility to return, in the form of an adjustment to rates,
2 fares, or charges to be billed in the future, any amounts with
3 interest, at a rate equal to the rate of return on the public
4 utility's rate base found to be reasonable by the commission,
5 received under the interim rates that are in excess of the
6 rates, fares, or charges finally determined to be just and
7 reasonable by the commission. Interest on any excess shall
8 commence as of the date that any rate, fare, or charge goes into
9 effect that results in the excess and shall continue to accrue
10 on the balance of the excess until returned.

11 [(e)] (f) In any case of two or more organizations,
12 trades, or businesses (whether or not incorporated, whether or
13 not organized in the State of Hawaii, and whether or not
14 affiliated) owned or controlled directly or indirectly by the
15 same interests, the commission may distribute, apportion, or
16 allocate gross income, deductions, credits, or allowances
17 between or among the organizations, trades, or businesses, if it
18 determines that the distribution, apportionment, or allocation
19 is necessary to adequately reflect the income of any such
20 organizations, trades, or businesses to carry out the regulatory
21 duties imposed by this section.



1 [(f)] (g) Notwithstanding any law to the contrary, for
2 public utilities having annual gross revenues of less than
3 \$2,000,000, the commission may make and amend its rules and
4 procedures to provide the commission with sufficient facts
5 necessary to determine the reasonableness of the proposed rates
6 without unduly burdening the utility company and its customers.
7 In the determination of the reasonableness of the proposed
8 rates, the commission shall:

9 (1) Require the filing of a standard form application to
10 be developed by the commission. The standard form
11 application for general rate increases shall describe
12 the specific facts that shall be submitted to support
13 a determination of the reasonableness of the proposed
14 rates, and require the submission of financial
15 information in conformance with a standard chart of
16 accounts to be approved by the commission, and other
17 commission guidelines to allow expeditious review of a
18 requested general rate increase application;

19 (2) Hold a public hearing as prescribed in section
20 269-12(c) at which the consumers or patrons of the
21 public utility may present testimony to the commission
22 concerning the increase. The public hearing shall be



1 preceded by proper notice, as prescribed in section
2 269-12; and

- 3 (3) Make every effort to complete its deliberations and
4 issue a proposed decision and order within six months
5 from the date the public utility files a completed
6 application with the commission; provided that all
7 parties to the proceeding strictly comply with the
8 procedural schedule established by the commission and
9 no person is permitted to intervene. If a proposed
10 decision and order is rendered after the six-month
11 period, the commission shall report in writing the
12 reasons therefor to the legislature within thirty days
13 after rendering the proposed decision and order.
14 Prior to the issuance of the commission's proposed
15 decision and order, the parties shall not be entitled
16 to a contested case hearing.

17 If all parties to the proceeding accept the
18 proposed decision and order, the parties shall not be
19 entitled to a contested case hearing, and section
20 269-15.5 shall not apply. If the commission permits a
21 person to intervene, the six-month period shall not
22 apply and the commission shall make every effort to



1 complete its deliberations and issue its decision
2 within the nine-month period from the date the public
3 utility's completed application was filed, pursuant to
4 subsections (b), (c), and (d).

5 If a party does not accept the proposed decision
6 and order, either in whole or in part, that party
7 shall give notice of its objection or nonacceptance
8 within the timeframe prescribed by the commission in
9 the proposed decision and order, setting forth the
10 basis for its objection or nonacceptance; provided
11 that the proposed decision and order shall have no
12 force or effect pending the commission's final
13 decision. If notice is filed, the above six-month
14 period shall not apply and the commission shall make
15 every effort to complete its deliberations and issue
16 its decision within the nine-month period from the
17 date the public utility's completed application was
18 filed as set forth in subsection (d). Any party that
19 does not accept the proposed decision and order under
20 this paragraph shall be entitled to a contested case
21 hearing; provided that the parties to the proceeding
22 may waive the contested case hearing.



1 Public utilities subject to this subsection shall follow
2 the standard chart of accounts to be approved by the commission
3 for financial reporting purposes. The public utilities shall
4 file a certified copy of the annual financial statements in
5 addition to an updated chart of accounts used to maintain their
6 financial records with the commission and consumer advocate
7 within ninety days from the end of each calendar or fiscal year,
8 as applicable, unless this timeframe is extended by the
9 commission. The owner, officer, general partner, or authorized
10 agent of the utility shall certify that the reports were
11 prepared in accordance with the standard chart of accounts.

12 [(g)] (h) Any automatic fuel rate adjustment clause
13 requested by a public utility in an application filed with the
14 commission shall be designed, as determined in the commission's
15 discretion, to:

- 16 (1) Fairly share the risk of fuel cost changes between the
17 public utility and its customers;
- 18 (2) Provide the public utility with sufficient incentive
19 to reasonably manage or lower its fuel costs and
20 encourage greater use of renewable energy;
- 21 (3) Allow the public utility to mitigate the risk of
22 sudden or frequent fuel cost changes that cannot



1 otherwise reasonably be mitigated through other
2 commercially available means, such as through fuel
3 hedging contracts;

4 (4) Preserve, to the extent reasonably possible, the
5 public utility's financial integrity; and

6 (5) Minimize, to the extent reasonably possible, the
7 public utility's need to apply for frequent
8 applications for general rate increases to account for
9 the changes to its fuel costs.

10 SECTION 3. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval."
13
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INTRODUCED BY:



JAN 26 2009



Report Title:

Public utilities commission

Description:

Creates a hard deadline for the final decision on interim rate decision.

