

Honolulu, Hawaii

FEB 20 2009

RE: S.B. No. 461

S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Madam:

Your Committee on Energy and Environment, to which was referred S.B. No. 461 entitled:

"A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY,"

begs leave to report as follows:

The purpose of this measure is to remove the dependency of the price of electrical energy generated from nonfossil fuel sources from the avoided cost of energy generated by the electric public utility purchasing the nonfossil fuel generated electricity.

Testimony in support of this measure was submitted by six private organizations. Testimony in support, with comments, was submitted by two state departments and two private organizations. Comments were submitted by one state department. Copies of written testimony are available for review on the Legislature's website.

The measure de-links power purchasing rates payable by a utility for nonfossil fuel generated electricity from the price of fossil fuels. Specifically, the measure amends section 269-27.2, Hawaii Revised Statutes, by deleting the limitation on a utility's power purchasing rates to no more than one hundred per cent of the cost avoided by the utility when the utility purchases the electricity rather than producing it.

Your Committee finds that the amendments proposed in this measure will significantly reduce any linkages between the




volatile prices of fossil fuels and the rate for nonfossil fuel generated electricity, potentially enabling utility customers to share in the benefits of price stability and fuel cost savings resulting from the use of nonfossil fuel generated electricity.

Your Committee has amended this measure by adopting the recommendations of several testifiers to revise the definition of "cost-effective" in section 269-91, Hawaii Revised Statutes, to be consistent with the amendments proposed in this measure.

As affirmed by the record of votes of the members of your Committee on Energy and Environment that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 461, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 461, S.D. 1, and be referred to the Committee on Commerce and Consumer Protection.

Respectfully submitted on  
behalf of the members of the  
Committee on Energy and  
Environment,



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MIKE GABBARD, Chair



The Senate  
Twenty-Fifth Legislature  
State of Hawaii

**Record of Votes**  
**Committee on Energy and Environment**  
**ENE**

Bill / Resolution No.:* <i>SB 461</i>	Committee Referral: <i>ENE, CPN</i>	Date: <i>12 Feb 2009</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
GABBARD, Mike (C)	✓			
ENGLISH, J. Kalani (VC)	✓			
GREEN, M.D., Josh	✓			
HOOSER, Gary L.	/			
IHARA, Jr., Les	/			
KOKUBUN, Russell S.	/			
HEMMINGS, Fred	/			
<b>TOTAL</b>	<i>7</i>		<i>0</i>	
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>J. Kalani English</i>				
<b>Distribution:</b> Original    Yellow    Pink    Goldenrod File with Committee Report    Clerk's Office    Drafting Agency    Committee File Copy				

\*Only one measure per Record of Votes

**Report Title:**

Renewable Energy; Public Utilities; Nonfossil Fuel Source

**Description:**

Removes the dependency of the price of electrical energy generated from nonfossil fuel sources from the avoided cost of energy generated by the electric public utility purchasing the nonfossil fuel generated electricity. (SD1)

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# A BILL FOR AN ACT

RELATING TO RENEWABLE ENERGY.

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

1           SECTION 1. Section 269-27.2, Hawaii Revised Statutes, is  
2 amended by amending subsection (c) to read as follows:

3           "(c) The rate payable by the public utility to the  
4 producer for the nonfossil fuel generated electricity supplied  
5 to the public utility shall be as agreed between the public  
6 utility and the supplier and as approved by the public utilities  
7 commission; provided that in the event the public utility and  
8 the supplier fail to reach an agreement for a rate, the rate  
9 shall be as prescribed by the public utilities commission  
10 according to the powers and procedures provided in this chapter.

11           ~~[In the exercise of its authority to determine the just and~~  
12 ~~reasonable rate for the nonfossil fuel generated electricity~~  
13 ~~supplied to the public utility by the producer, the commission~~  
14 ~~shall establish that the rate for purchase of electricity by a~~  
15 ~~public utility shall not be more than one hundred per cent of~~  
16 ~~the cost avoided by the utility when the utility purchases the~~  
17 ~~electrical energy rather than producing the electrical energy.]~~

1           The commission's determination of the just and reasonable  
2 rate shall be accomplished by establishing a methodology that  
3 removes or significantly reduces any linkage between the price  
4 of fossil fuels and the rate for the nonfossil fuel generated  
5 electricity to potentially enable utility customers to share in  
6 the benefits of fuel cost savings resulting from the use of  
7 nonfossil fuel generated electricity. As the commission deems  
8 appropriate, the just and reasonable rate for nonfossil fuel  
9 generated electricity supplied to the public utility by the  
10 producer may include mechanisms for reasonable and appropriate  
11 incremental adjustments, such as adjustments linked to consumer  
12 price indices for inflation or other acceptable adjustment  
13 mechanisms."

14           SECTION 2. Section 269-91, Hawaii Revised Statutes, is  
15 amended by amending the definition of "cost-effective" to read  
16 as follows:

17           ""Cost-effective" means the ability to produce or purchase  
18 electric energy or firm capacity, or both, from renewable energy  
19 resources at or below avoided costs or as the public utilities  
20 commission otherwise determines to be just and reasonable  
21 consistent with the methodology set by the public utilities  
22 commission in accordance with section 269-27.2."

1 SECTION 3. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on July 1, 2009.



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

**LINDA LINGLE**  
GOVERNOR  
**THEODORE E. LIU**  
DIRECTOR  
**MARK K. ANDERSON**  
DEPUTY DIRECTOR

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Statement of  
**THEODORE E. LIU**  
**Director**  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**  
Friday, February 27, 2009  
9:30 A.M.  
State Capitol, Conference Room 229

in consideration of  
**SB 461 SD1**  
**RELATING TO RENEWABLE ENERGY**

Good morning, Chair Baker, Vice Chair Ige, and Members of the Committee.

SB 461 SD1 removes the link between the purchase power rates payable by the utility for nonfossil fuel generated electricity, and the prices of fossil fuels. It amends Section 269-27.2 (c), Hawaii Revised Statutes (HRS), by deleting the provision that limits the purchase power rates to no more than 100 per cent of “the cost avoided by the utility when the utility purchases the electrical energy rather than producing the electrical energy.” It also amends the definition of “Cost-effective” in Section 269-91, HRS, to remain consistent with the methodology set by the Public Utilities Commission (PUC). DBEDT supports SB 461, SD1. Removing the limit on the purchase power rates based on the utility’s avoided cost provides the PUC with greater flexibility in determining just and reasonable purchased power rates, and will be more likely to promote the development of renewable energy resources.

Thank you for the opportunity to testify.



WRITTEN ONLY

**TESTIMONY OF CARLITO P. CALIBOSO  
CHAIRMAN, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
FEBRUARY 27, 2009**

**MEASURE: S.B. No. 461 S.D. 1**  
**TITLE: Relating to Renewable Energy**

Chair Baker and Members of the Committee:

**DESCRIPTION:**

This bill amends Section 269-27.2, Hawaii Revised Statutes ("HRS"), by removing the avoided cost limit on the rate for purchase of electricity by a public utility when the utility purchases electrical energy. In addition the bill amends the definition of "cost effective" in Section 269-91, HRS.

**POSITION:**

The Commission has no objections to the proposed amendments.

**COMMENTS:**

The Commission defers to the Legislature's judgment as to whether the avoided cost limit on the rate that an electric utility must pay for nonfossil fuel generated electricity should be eliminated.

The Commission appreciates the Legislature's proposed amendment to the definition of "cost effective" as contained in HRS Section 269-91, to remain consistent with the methodology set by the Commission:

Thank you for the opportunity to testify.



COLLEGE OF SOCIAL SCIENCES  
**HAWAII ENERGY POLICY FORUM**  
UNIVERSITY OF HAWAII AT MĀNOA

**Hawai'i Energy Policy Forum**

Mr. Robbie Alm, HECO  
Ms. Amy Asselbayer, Ofc of US Rep.  
Neil Abercrombie  
Ms. Madeleine Austin, World Business  
Academy  
Ms. Catherine Awakuni, Div. of  
Consumer Advocacy  
Mr. Warren Bollmeier  
Hi Renewable Energy Alliance  
Mr. Carlito Caliboso, PUC (Observer)  
Mr. Albert Chee, Chevron  
Mr. Kyle Datta, U.S. Biofuels  
Mr. Mark Duda Hi Solar Energy Assoc.  
Sen. Kalani English, Hi State Senate  
Mr. Mitch Ewan, UH HNEI  
Mr. Carl Freedman  
Haiku Design and Analysis  
Mr. Mark Glick, OHA  
Mr. Steve Golden, The Gas Company  
Dr. Michael Hammett, RCUH  
Ms. Paula Helfrich, EDAH  
Mr. William Kaneko, HI Institute for  
Public Affairs  
Mr. Darren Kimura, Energy Industries  
Holdings  
Mr. Mike Kitamura, Ofc of US Sen.  
Daniel K. Akaka  
Mr. Kal Kobayashi, Maui County  
Mr. Laurence Lau, DOH  
Ms. Yvonne Lau, Ofc of US Rep.  
Mazie Hirono  
Mr. Allyn Lee, C&C of HNL  
Mr. Aaron Leong, Ofc of US Senator  
Daniel K. Inouye  
Dr. Stephen Meder, AIA-Honolulu  
Sen. Ron Menor, Hi State Senate  
Mr. Robert Harris, Sierra Club  
Dr. Bruce Miller, UH Ofc of  
Sustainability  
Dr. Sharon Miyashiro, Social  
Sciences Public Policy Ctr.  
Rep. Hermina Morita, Hi State  
House of Representatives  
Mr. Tim O'Connell, USDA/Rural  
Development  
Mr. Richard Paglinawan  
Pa Ku'i A Lua  
Ms. Melissa Pavlicek, Western States  
Petroleum Assn  
Mr. Randy Perreira, HI State AFL-CIO  
Dr. Rick Rocheleau, UH HNEI  
Mr. Peter Rosegg, HECO  
Mr. Steven Rymsha, KIUC  
Mr. Riley Saito, PowerLight Corp.  
Mr. Glenn Sato, Kauai County OED  
Ms. Carilyn Shon, DBEDT  
Mr. Bill Short, BIA of Hawaii  
Mr. Ray Starling, HI Energy Grp  
Mr. Lance Tanaka, Tesoro HI Corp  
Dr. Don Thomas, UH Center for the  
Study of Active Volcanoes  
Mr. Murray Towill, Hawai'i  
Hotel Assn  
Ms. Joan White, Hon Community  
Action Program

Testimony of  
**Carl Freedman**

Chair, Regulatory Reform Working Group  
Hawai'i Energy Policy Forum

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator David Y. Ige, Vice Chair

Friday, February 27, 2009 9:30 a.m.  
Conference Room 229

**IN SUPPORT OF SB 461 SD1 – RELATING TO RENEWABLE ENERGY**

I am Carl Freedman, Chair of the Regulatory Reform Working Group of the Hawaii Energy Policy Forum ("Forum"). The Forum is comprised of over forty representatives from the electric utilities, oil and natural gas suppliers, environmental and community groups, renewable energy industry, and federal, state and local government, including representatives from the neighbor islands. We have been meeting since 2002 and have adopted a common vision and mission, and a comprehensive "10 Point Action Plan," which serves as a framework and guide for meeting our preferred energy vision and goals.

SB 461 would delete the Hawaii State statutory avoided cost ceiling on wholesale energy contracts which is currently more restrictive than federal avoided cost limitations. This change would allow the Hawaii PUC to allow renewable energy producers to receive higher than "least avoided costs" when a price is agreed between the utility and the producer and the PUC finds the price to be "just and reasonable". Federal law limiting mandatory enforcement by the PUC of prices above avoided cost would still apply. The need for this change was identified by several parties in the Feed-in Tariff docket now in process before the PUC.

**The Forum supports SB 461 SD1 as a change that is good and necessary.**

Thank you for this opportunity to testify.

*This testimony reflects the position of the Forum as a whole and not necessarily of the individual Forum members or their companies or organization*

TESTIMONY BEFORE THE  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Friday, February 27, 2009  
9:30 a.m.  
Conference Room 229, State Capitol

S.B. NO. 461, S.D. 1  
RELATING TO RENEWABLE ENERGY

By Lisa Kikuta  
Director, Government & Public Affairs  
Hawaiian Electric Company, Inc.

Chair Baker, Vice-Chair Ige, and Members of the Committee:

My name is Lisa Kikuta, testifying on behalf of Hawaiian Electric Company, Inc. and our subsidiary companies, Hawaii Electric Light Company, Inc. and Maui Electric Company, Ltd. (collectively, the HECO Companies).

The HECO Companies support this bill, which proposes to delete the provision in HRS § 269-27.2(c) that may cap the price that a utility pays to an independent power producer (IPP) for non-fossil fuel generated electricity at one hundred per cent of the cost that the utility avoids by purchasing the electrical energy rather than producing it.

The HECO Companies support this bill because the proposed change may help to address the challenges that may arise during negotiations between the utility and the IPP when it comes to discussing a purchase price that is no more than the utility's avoided cost. For example, in some cases, it may be difficult for an IPP to accept a price that is no more than the avoided cost, due to complexities associated with the IPP's particular production site, facilities needed to interconnect the project or use of newer technology.

In addition, this bill would clarify the Public Utilities Commission's flexibility to decide whether power purchase agreements between the utility and IPPs are in the public interest. For example, the Commission may be able to approve a power purchase agreement connected to a particular renewable energy project if the overall merits of the project, both cost and non-cost, justify a price that is higher than the utility's avoided cost.

For these reasons, we support S.B. No. 461, S.D. 1 and request its passage. Thank you for the opportunity to testify.



# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.537.9019 hawaii.chapter@sierraclub.org

## SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

February 27, 2009, 9:30 A.M.  
(*Testimony is 1 page long*)

### TESTIMONY IN SUPPORT OF SB 461, SD1

Aloha Chair Baker and members of the Committee:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, supports SB 461, SD1, making it easier to determine an appropriate rate for non-fossil fuel generated electricity. This bill removes the direct linkage between the volatile price of fossil fuels and the amount to be paid for renewable energy, thus allowing for market stability and long-term investments in clean, renewable energy.

Hawaii's economic, environmental, and energy security demand that we reduce the amount of fossil fuel imported and consumed in Hawaii. Hawai'i is the most dependent state in the nation on imported oil. Some 50 million barrels are imported annually, nearly 80% of which originate from foreign sources. In addition, over 805,000 tons of coal are imported into our state. These sources provide power for over 92% of Hawaii's electricity generation. The combustion of these resources also contributes over 23 million tons of climate changing greenhouse gas into our atmosphere annually.

This bill is a solid step in that direction. It encourages the development of renewable energy by setting reasonable rates based on consideration of all factors and not merely the "avoided cost" of fossil fuels. Consider:

- This bill benefits investors in renewable energy because they can make long-range decisions based on assured pricing, rather than waiting (too late) for the price of oil to spike.
- This bill benefits consumers because it ensures diversity of energy production and reduces volatility in market pricing.
- This bill benefits the environment because decisions are set not merely by short-term pricing, but rather in light of a long-range policy of shifting towards clean energy.

Without this measure, Hawai'i will not move forward in developing renewable energy until it's too late and our financial capacity is crippled by the anticipated high cost of oil.

Thank you for this opportunity to provide testimony.



**SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

February 27<sup>th</sup>, 2008, 9:30 A.M.

Room 229

**(Testimony is 2 pages long)**

**TESTIMONY IN SUPPORT OF SB 461 SD1**

Chair Baker and members of the committee:

The Blue Planet Foundation supports Senate Bill 461 SD1, eliminating an existing constraint to increasing electricity generated from non-fossil sources. By removing the existing “avoided cost cap” in statute, SB 461 SD1 will significantly reduce any linkages between the volatile prices of fossil fuels and the rate for nonfossil fuel generated electricity, potentially enabling utility customers to share in the benefits of price stability and fuel cost savings resulting from the use of non-fossil fuel generated electricity.

Increasing the use of indigenous, renewable resources for electricity generation is crucial to Hawaii’s clean, independent, and sustainable energy future. Increased use of nonfossil fuels will strengthen Hawaii’s economy and protect our environment. The resilience of the state’s economy is compromised by the dependence on the volatile prices of fossil fuels. The state is currently dependent on foreign fossil fuels whose supply is not always secure and predictable.

Existing state law prevents the public utilities commission (PUC) from allowing contracts for clean energy purchased by a public utility at a price that exceeds that utility’s “avoided cost” for producing electricity with fossil fuels. Blue Planet believes this existing policy is flawed because:

1. It creates an obstacle to other initiatives to increase clean energy use in Hawaii. A recent study on Feed-in Tariffs conducted by the National Regulatory Research Institute<sup>1</sup> for the PUC suggests that the current law may put a cap on the feed-in tariff price. The existing statute may prohibit a feed-in tariff greater than the current cost of oil-powered electricity.
2. It doesn’t necessarily recognize the external values in clean energy production, including less impact to the environment, job creation, less drain on Hawaii’s economy to pay for imported fossil fuel, the hedge value in a long term clean energy contract versus volatile fossil fuel prices, and other values.

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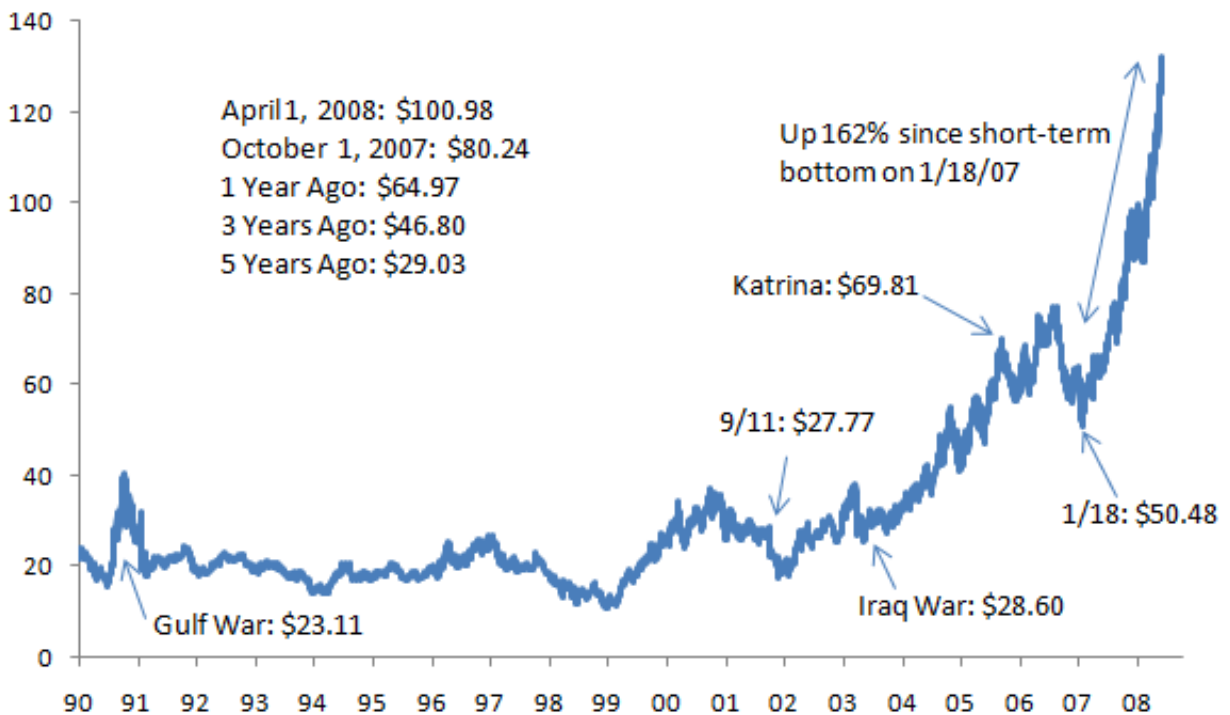
<sup>1</sup> National Regulatory Research Institute. Feed-in Tariffs: Best Design Focusing Hawaii’s Investigation. December 2008.

3. It is difficult to quantify due to the volatility in the price of fossil fuels, making contracting with clean energy producers more difficult. As the oil price chart at the bottom of this page makes clear, a decision about “avoided cost” made in 2002 given the fossil fuel price at the time would be off by 400% six years later.

Senate Bill 461 SD1 corrects this existing policy by eliminating the requirement that the PUC not exceed the avoided cost of electricity in determining the price for clean energy providers. Passage of SB 461 SD1 helps to align state energy policy with Hawaii’s preferred clean energy future by eliminating this constraint to increasing electricity generated from nonfossil fuels.

Thank you for the opportunity to testify.

**Oil Prices, 1990 - 2008**



**SB 461 SD1  
RELATING TO RENEWABLE ENERGY**

**PAUL T. OSHIRO  
MANAGER – GOVERNMENT RELATIONS  
ALEXANDER & BALDWIN, INC.**

**FEBRUARY 27, 2009**

Chair Baker and Members of the Senate Committee on Commerce & Consumer Protection:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin, Inc. (A&B) and its agricultural company Hawaiian Commercial & Sugar Company on SB 461 SD1, "A BILL FOR AN ACT RELATING TO RENEWABLE ENERGY." We support this bill.

Hawaiian Commercial & Sugar Company (HC&S) has been in operation for over 125 years. While Hawaii's many other sugar companies have shut down over the years, HC&S has been fortunate, through significant investments in our agricultural infrastructure and operations and the implementation of our diversified bio-production program, to have sustained our operations and continue as a major employer in the State of Hawaii. Today, as we face increasingly lower margins from raw sugar production because of flat commodity prices along with increasing production costs, HC&S is in the process of transitioning from a primary producer of commodity sugar into the production of specialty sugar and bio-based products. In addition to being the sole supplier of Sugar In The Raw, the little brown packets of sugar seen at restaurants and coffee shops across the nation, HC&S is also expanding production and sales of our specialty Maui Brand Sugar.

HC&S also generates biomass produced electricity for its sugar milling, irrigation pumping, and other internal operations and provides electricity to Maui Electric Company (MECO) for general community use. The source of fuel for this biomass electricity is bagasse, the residual fiber of the sugar cane plant. Not only does HC&S provide approximately 7% of MECO's total electricity, HC&S is a firm power source to MECO (i.e. committed power delivery, not on an 'as available' basis), and has played a significant role in the restoration of MECO's electrical service during power outages.

This bill proposes to remove the dependency of the rate for electrical energy generated from non-fossil fuels (that are not entirely tied to fossil fuels) from the cost of electrical energy generated entirely from fossil fuels. The result will be a significant reduction of the present linkage between the volatile market price of fossil fuels and the rate for the production of non-fossil fuel generated electricity (that is not entirely tied to fossil fuels). By minimizing the potential for fluctuations in the public utility reimbursement rates (which presently occur in conjunction with the fluctuation in the market price of fossil fuels), the prospects of attracting new renewable energy producers and retaining present renewable energy producers will be significantly enhanced. The anticipated result will be an overall lowering of Hawaii's dependence on fossil fuel imports and an increase in the prospects of Hawaii's future energy security.

Based on the aforementioned, we respectfully request your favorable consideration on this bill.

Thank you for the opportunity to testify.