

**TESTIMONY OF CARLITO P. CALIBOSO
COMMISSIONER, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
MARCH 15, 2011**

MEASURE: S.B. No. 704 S.D. 2
TITLE: Relating to Renewable Energy.

Vice Chair Coffman and Members of the Committee:

DESCRIPTION:

This bill exempts third-party customer-generated solar energy facilities and equipment from the definition of public utility.

POSITION:

The Public Utilities Commission ("Commission") does not object to this bill, which is similar to H.B. 1520 H.D. 2, which this committee previously approved. In addition to the language in this bill, H.B. 1520 H.D. 2 also requires the Commission to monitor the impact of net energy metering.

COMMENTS:

Under the current definition of "public utility" in Section 269-1, HRS, it could be argued that the innovative business models of companies such as SunRun place them within the definition of a public utility. While the Commission may not find such an argument persuasive, it may be best to clarify the law so that companies using these business models can continue to help more Hawaii consumers benefit from renewable energy systems on their properties.

Thank you for the opportunity to testify.

**THE SOLAR
ALLIANCE
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**Working with the
states to develop
cost-effective PV
policies and
programs.**



TESTIMONY IN STRONG SUPPORT OF SB704, SD2

To: House Committee on Energy & Environmental Protection

Hearing on March 15, 2011 at 9a.m. in Room 325

From: The Solar Alliance

Aloha Chair Morita, Vice Chair Coffman and members of the Committee:

The Solar Alliance is in strong support of SB704, SD2 because it provides clarity to HRS sec. 269-1 and recognizes that Third-party PV owner/operators are exempt from the definition of a public utility.¹

Such clarity will expedite the ability to make more solar energy systems available to all homeowners, commercial business owners, schools and government buildings in Hawaii.

Many people think that if we want solar, all that is necessary is to go out and install PV panels. It is not that simple because many residents and businesses in Hawaii are either unwilling or unable to purchase and operate individual solar energy systems for a variety of reasons. Third-party PV owners/operators fill that void.

Third-party PV owners/operators monetize federal and state tax credits, provide cost-effective financing, and professionally install, monitor, operate and maintain individual solar energy systems on a customer's property, providing the power directly to the customer. Thus, the customer avoids much of the difficulty associated with developing and installing solar systems.

Third-party PV owners/operators, however, are not public utilities. Unlike an electrical public utility, a Third-party PV owner/operator only provides supplemental power to the customer and, the customer is still connected to the electrical public utility grid. The Third party PV owner/operators' services are not indispensable to the customer and the Third party PV owner/operator is not the provider of last resort. The solar services provided by the third party developer are not a monopoly service and as such no "obligation to serve exists." Conversely, the public does not have a right to demand solar electric service from providers in the very competitive marketplace that exists for such solar development. The agreement between the

¹ This Committee in its wisdom passed out its House companion, HB1520.

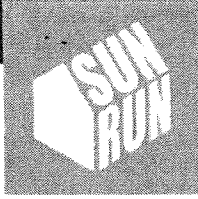
Third-party PV owner/operator and the customer is voluntary; meaning price and all terms and conditions are negotiated at arms length, with all traditional contracting party rights retained.

In addition, passage of this legislation removes a barrier to Third-party PV owners/operators entering the state, adding jobs and increasing the existing competition in the solar industry, ensuring that solar companies offer the most compelling product available for the customer.

The Solar Alliance does not object to making this exemption applicable to all third party renewable energy suppliers. However, the inclusion of such language should not hinder the passage of SB704, SD2, specifically in regards to clarifying that Third-party PV owner/operators are exempt from the definition of a public utility. As stated above, this amendment is vital to expedite the ability to make more solar energy systems available to all homeowners, commercial business owners, schools and government buildings in Hawaii.

Thank you for the opportunity to provide testimony in strong support of SB704, SD2.

(The Solar Alliance is a state-focused association of solar manufacturers, integrators, and financiers specifically working with state administrators, legislators, and utilities to establish cost-effective solar policies and programs. Our experience in Hawaii includes, but is not limited to, (i) being an intervenor in the Public Utilities Commission's ("PUC") Feed-in Tariffs Investigation; (ii) having a member be an intervenor in the Commission's Intra-Governmental Wheeling Docket; (iii) having a member serve on the Generating Committee of the Hawaii Clean Energy Initiative ; and (iv) having a member serve on the Hawaii Energy Policy Forum since it convened in 2003.)



TESTIMONY IN SUPPORT OF SB704, SD2

To: House Committee on Energy & Environmental Protection

Tuesday, March 15th, 2011

Aloha Chair Morita, Vice Chair Coffman, and members of the Committee:

SunRun believes that every homeowner should have access to clean, affordable energy. As the leading home solar services provider in the U.S, SunRun owns and operates more home solar systems than any other company and allows customers to adopt solar for little to no money upfront. Founded in 2007, SunRun currently serves more than 8,000 customers in 7 states.

SunRun supports SB704, SD2 for three primary reasons:

1. **SunRun believes that third-party solar services are an important option for Hawaii homeowners and institutions that are interested in clean solar electricity.** Third-party solar services fill a significant void in the market for interested parties that are not capable of providing the upfront investment necessary or that choose not to take on the on-going ownership responsibility of maintaining a solar facility.
2. **Third-party solar services provide competitive services and choice for Hawaii residents and institutions.** In contrast to a public utility that maintains and manages a natural monopoly of fixed transmission and distribution infrastructure, third-party solar services are a choice for Hawaii's homeowners, businesses, schools, and government buildings. These services supplement – they do not entirely replace – traditional grid services. As such, they are not indispensable for customers and they do not provide a public service.
3. **SB704, SD2 will provide additional clarity to Hawaii's solar market that will further stimulate new growth and environmental benefits.** Hawaii's solar market development has and is poised to continue creating new clean energy jobs and reducing the state's dependence on environmentally damaging fuel sources for electricity.

SB704, SD2 is critical for the future growth of Hawaii's solar market. SunRun is supportive of making the exemption applicable to other renewable energy providers as well, provided that this broadening does not impede SB704, SD2's passage.

Thank you for the opportunity to provide testimony in support of SB704, SD2.





TO: House Committee on Energy and Environmental Protection
Honorable Representative Hermina M. Morita, Chair
Honorable Representative Denny Coffman, Vice Chair

RE: Testimony Commenting on SB704 SD2 Relating To Renewable Energy.

Testimony is 2 pages long.

HEARING: Tuesday, March 15, 9:00 a.m., Room 325

Madam Chair and members of the Committee:

I appreciate this committee's consideration of SB704 SD2, and welcome this opportunity submit testimony providing comments on the bill its current form.

My name is Larry Gilbert, and I am the Managing Partner and Chief Executive of Kairos Energy Capital LLC. Kairos Energy Capital is a Hawai'i merchant bank that focuses entirely on providing and arranging funding for renewable energy projects. We have become one of the leading experts in Hawai'i in solar project financing. Notable financing which we have completed include solar panels on all of the Neighbor Island airports for the State of Hawai'i Department of Transportation (one of the largest solar project financings done in Hawai'i) and the recent refinancing of the Hawi Wind Farm on the Big Island.

SB704 SD2 clarifies the existing definition of a "public utility" to provide certainty that persons who own or operate generating facilities located entirely on a customer's property and provide the energy only to that customer are not inadvertently swept into classification of being a "public utility." The bill would help provide additional comfort to an increasingly important source of funding for renewable energy projects in Hawai'i, which is the "third-party power purchase agreement" providers who put up the money to install a customer's renewable energy system in return for the customer's agreement to buy the energy from them. This in turn will facilitate renewable energy in Hawai'i, where we currently estimate that over half of the systems installed in 2011 will rely on this type of "third-party power purchase agreement" financing.

We fully support the intent of the bill, but offer these comments out of concern for possible unintended consequences from the bill as written. There currently exists a body of law and decisions from the Public Utilities Commission in which persons or entities which provide utility services, such as water, electricity or waste disposal, to another person or a small group or "hui" even when not on the user's property, are not considered to be a "public utility" because they do not offer the services to the public.

This bill, because of its specific exemption of renewable energy sources located “on a customer’s property,” could cause all of the existing body of law and rulings on non-public utility arrangements (the “hui” concept referred to above) to be called into question. This is because of a legal principle that says that when a law provides for one thing specifically, it is assumed that the law also intended to exclude all other things. This principle, known by the latin name of “*expressio unius est exclusio alterius*,” says that “when certain persons or things are specified in a law, ... an intention to exclude all others from its operation may be inferred.”

Thus, when SB704 SD2 specifically exempts renewable energy generating facilities located entirely on a customer’s property, by operation of the *expressio unius* doctrine, it could be interpreted to take away the authority of the Public Utilities Commission and the courts to find that under the more general portions of the definition of a “public utility” under HRS Chapter 269, renewable energy facilities of any other kind than those located entirely on the customer’s property are also not “public utilities.”

In order to prevent the excellent intent of SB704 SD2 from inadvertently creating uncertainty in other parts of public utility law, we would suggest that this committee add language to the bill stating that it is not intended to affect existing law or decisions, and is not intended to remove the discretion of the Commission and the courts to interpret the general definition of a “public utility” and to apply it to find that in appropriate circumstances, renewable energy generating facilities not located on a customer’s property may nonetheless not fall within the definition of a “public utility.”

Thank you for the opportunity to submit this testimony, and please feel free to contact me if I can be of further assistance.

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TESTIMONY IN SUPPORT OF SB 704, SD2

To: House Committee on Energy and Environmental Protection

From: SolarCity

Hearing on March 15, 2011 at 9:00 a.m., Room 325

Aloha Chair Morita, Vice Chair Coffman and Members of the Committee:

SolarCity is a full service provider of photovoltaic (PV) solar power systems for homeowners, businesses, not-for-profit organizations, and government entities. SolarCity provides integrated PV solar system design, financing, installation, leasing, maintenance, and monitoring services, and is the nation's leading solar service provider, with more than 1,100 employees in Hawaii and other states.

SolarCity supports SB 704 because it provides clarity to HRS section 269-1 and confirms that third-party PV owner/operators do not fall within the state's definition of a public utility.

As you may know, many residents, businesses and government entities in Hawaii are either unwilling or unable to purchase and operate individual solar energy systems for a variety of reasons. SolarCity and other third-party PV owner/operators fill that void by monetizing federal and state tax credits and providing cost-effective financing. This enables customers to avoid much of the difficulty associated with developing and installing solar systems.

Third-party PV owner/operators are not public utilities. Unlike an electrical public utility, a third-party PV owner/operator provides only supplemental power to the customer, and the customer remains connected to the electrical public utility grid.

The third party PV owner/operator is not the provider of last resort. The solar services it provides are not a monopoly service, and no "obligation to serve" exists. Moreover, the agreement between the third-party PV owner/operator and the customer is voluntary, meaning price and all other terms and conditions are negotiated at arms-length, with all traditional contracting party rights retained.

The clarity provided by SB 704 will lead to continued availability of solar energy systems to all residents, businesses and government entities in Hawaii. This, in turn, will create additional jobs in Hawaii and increase competition in the solar industry, ensuring that Hawaii customers are offered the most compelling solar products available.

California and other states already have enacted statutes clarifying that third-party PV owner/operators do not fall within the state definition of public utility. It makes sense for Hawaii to do the same, which will help attract further investment in the solar industry and create additional green jobs.

Thank you for the opportunity to provide testimony in support of SB 704.

Mahalo,

Pete Cooper
Regional Director, Hawaii

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Herbert M. (Monty) Richards
Kahua Ranch Ltd.

TESTIMONY OF WARREN BOLLMEIER ON BEHALF OF THE HAWAII RENEWABLE ENERGY ALLIANCE BEFORE THE HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

SB 704 SD2, RELATING TO RENEWABLE ENERGY

March 15, 2011

Chair Morita, Vice-Chair Coffman and members of the Committee, I am Warren Bollmeier, testifying on behalf of the Hawaii Renewable Energy Alliance (HREA). HREA is a nonprofit corporation in Hawaii, established in 1995 by a group of individuals and organizations concerned about the energy future of Hawaii. HREA's mission is to support, through education and advocacy, the use of renewables for a sustainable, energy-efficient, environmentally-friendly, economically-sound future for Hawaii. One of HREA's goals is to support appropriate policy changes in state and local government, the Public Utilities Commission and the electric utilities to encourage increased use of renewables in Hawaii.

The purpose of SB 704 SD2 is to exempt certain third party owners and operators of on-site renewable energy systems from regulation as public utilities by the public utilities commission.

HREA **strongly supports** this measure as it supports the state's overall clean energy objectives, and we offer the following comments in support.

By their nature, customer-sited renewable facilities such as wind, biomass and hydro, help individual (or a small group of) consumers meet their energy needs. We view the developer or energy service company that provides the facility to the consumer (s) as "private utilities", rather than "public utilities" that serve a large number of consumers and has the "obligation to serve" via a monopoly franchise, and is therefore regulated (such as Hawaii Electric Company) by the public utilities commission.

Therefore, third-party developers, owners and operators of customer-generated renewable energy facilities are not public utilities, and should not be subject to regulations by the public utilities commission.

Thank you for this opportunity to testify.