

SB 704

**TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
SENATE COMMITTEE ON ENERGY AND ENVIRONMENT**

FEBRUARY 1, 2011

MEASURE: S.B. No. 704

TITLE: Relating to Renewable Energy.

Chair Gabbard 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 Commission does not object to this bill.

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 solar energy systems on their properties.

The Commission suggests that if this bill is passed, it would be reasonable to include other types of renewable energy that can be net metered.

Thank you for the opportunity to testify.



Hawaii Solar Energy Association
Serving Hawaii Since 1977

February 1, 2011
3:30PM

SENATE
COMMITTEE ON ENERGY AND ENVIRONMENT
SB 704

Mark Duda
President

TESTIMONY IN SUPPORT

Aloha Chair Gabbard, Vice Chair English, and Members of the Committee:

The Hawaii Solar Energy Association (HSEA) supports HB 1520, which exempts third-party owners/operators of solar systems from the definition of "public utility."

HSEA notes that third-party owner/operators of solar systems provide only supplemental power from a specific system to a specific customer. This customer remains connected to the grid under a contract with a regulated utility. Under these conditions, the third party owner should not be regulated as a public utility, that is, as an entity that sells electricity to the general public.

In addition, this model of third-party ownership/operation is critical to the State's ability to meet its clean energy goals as it allows for the further adoption of solar systems by businesses and homeowners who want to be part of this clean energy movement, but whom do not have the means to finance a system on their own. Even more importantly, the State itself has a number of contracts out in which it procures power under third-party contracts, including those at the DOTA, DOE, and UH Community Colleges; as well as projects for the Counties. If the providers of these power purchase contracts are regulated as utilities they will surely avoid doing business in the state as the cost of compliance vastly outweighs the value of the contracts.

Thank you for the opportunity to testify on this measure.

Mark Duda
President, Hawaii Solar Energy Association

About Hawaii Solar Energy Association

Hawaii Solar Energy Association (HSEA) is comprised of installers, distributors, manufacturers and financiers of solar energy systems, both hot water and PV, most of which are Hawaii based, owned and operated. Our primary goals are: (1) to further solar energy and related arts, sciences and technologies with concern for the ecologic, social and economic fabric of the area; (2) to encourage the widespread utilization of solar equipment as a means of lowering the cost of energy to the American public, to help stabilize our economy, to develop independence from fossil fuel and thereby reduce carbon emissions that contribute to climate change; (3) to establish, foster and advance the usefulness of the members, and their various products and services related to the economic applications of the conversion of solar energy for various useful purposes; and (4) to cooperate in, and contribute toward, the enhancement of widespread understanding of the various applications of solar energy conversion in order to increase their usefulness to society.

**THE SOLAR
ALLIANCE
MEMBER
COMPANIES**

Applied Materials

Borrego Solar

BP Solar

Community Energy

Element Power

First Solar

enXco

Kyocera

Mainstream Energy

Mitsubishi Electric

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Solyndra

SunRun

SolarWorld

SPG Solar

SunEdison

SunPower

Suntech

Tioga Energy

Trinity Solar

Unirac

Uni-Solar

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



TESTIMONY IN STRONG SUPPORT OF SB 704

To: Senate Committee on Energy and Environment

Hearing on February 1, 2011 at 3:30p.m. in Room 225

From: The Solar Alliance

Aloha Chair Gabbard and members of the Committee:

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.

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 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 is in strong support of SB704 because it provides clarity to HRS sec. 269-1 and recognizes that Third-party PV owner/operators do not fall within the definition of a public utility.

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.

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

HAWAII RENEWABLE ENERGY ALLIANCE

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TESTIMONY OF WARREN BOLLMEIER ON BEHALF OF THE HAWAII RENEWABLE ENERGY ALLIANCE BEFORE THE SENATE COMMITTEE ON ENERGY AND ENVIRONMENT

SB 704, RELATING TO RENEWABLE ENERGY

February 1, 2011

Chair Gabbard, Vice-Chair English 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 purposes of SB 704 are to: (i) exempt third-party customer-generated solar energy facilities and equipment from the definition of public utility, and (ii) makes nonsubstantive technical amendments to the definition of public utility.

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

- (1) Private Utility non Public Utility. By their nature, solar facilities and other customer-site renewables 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 which also may have the "obligation to serve" via a monopoly franchise. Therefore, these third-party customer-generated solar energy facilities or the developer or energy service company are not public utilities.
- (2) Additional Technologies. Given our comments above, we recommend customer-generated wind, biomass and hydro facilities be included in this measure. These technologies are currently eligible, along with solar, for net energy metering, and wind and in-line hydro are also eligible (along with solar) for feed-in tariffs.

In summary, this measure (if amended as recommended above) will provide a valuable benefit to all customers that are considering installation of on-site wind, solar, biomass and hydro facilities under net metering, feed-in tariff or other agreements, such as standard interconnection agreements.

Thank you for this opportunity to testify.



TESTIMONY IN SUPPORT OF SB 704

To: Senate Committee on Energy and Environment

From: SolarCity

Hearing on February 1, 2011 at 3:30 p.m., Room 225

Chair Gabbard 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 1,000 employees.

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.



SolarCity strongly 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. Such clarity will lead to increased 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.

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

Very truly yours,

/s/

Sanjay Ranchod
Director of Government Affairs