

SR70

REQUESTING THE ATTORNEY GENERAL TO INVESTIGATE GEOTHERMAL
ROYALTIES.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
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**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committees on
WATER, LAND AND HOUSING
and
JUDICIARY AND LABOR**

**Friday, April 01, 2011
9:00 AM
State Capitol, Conference Room 016**

**In consideration of
SENATE CONCURRENT RESOLUTION 85 / SENATE RESOLUTION 70
REQUESTING THE ATTORNEY GENERAL TO
INVESTIGATE GEOTHERMAL ROYALTIES**

Senate Concurrent Resolution No. 85 / Senate Resolution No. 70 request the Department of the Attorney General to conduct an investigation of the payment geothermal royalties; the special land and development fund as it relates to the deposits of geothermal royalties; the adequacy of annual reports submitted by the Department of Land and Natural Resources (Department) to the Legislature pursuant to Sections 182-18 and 171-29, Hawaii Revised Statutes (HRS), on all geothermal royalty dispositions; any other matters the Attorney General deems relevant to the investigation to ensure that geothermal royalties are administered in a fair, legal and ethical manner; and to report its finding and make recommendations to the 2012 Legislature.

The Department will fully cooperate in this investigation by the Department of the Attorney General to ensure compliance with statutory mandates. The Department would like to offer the following comments on these resolutions:

- Geothermal energy rates are established independently from royalty rates. Geothermal energy rates require the approval of a Power Purchase Agreement between Puna Geothermal Venture (PGV) and Hawaii Electric Light Co. by the Public Utilities Commission (PUC). Royalty rates are established by the Board of Land and Natural Resources (Board) pursuant to Section 182-18, HRS and Section 13-183-31, Hawaii Administrative Rules. The Board had approved the royalty rate calculation method on September 24, 1993. A copy of this Board submittal can be made available upon request.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Royalties are charged on PGV's revenues, less certain allowed deductibles, and are paid directly to the Department. 50% of these royalty payments are retained by the Department, 30% is paid to the County (in accordance with Section 182-7 HRS), and 20% is paid to the Office of Hawaiian Affairs.

- In accordance with Section 182-18 HRS, the Department submits an annual report to the Legislature identifying the disposition of the total geothermal royalties received from PGV in the preceding fiscal year. This report also identifies the status of any project PGV has performed at their facility in the preceding fiscal year. A copy of the latest report is available on the Department's website at the following link:

<http://hawaii.gov/dlnr/reports-to-the-legislature/2011/EN-Geothermal-Rpts-FY10-Secs182-18-196D-11.pdf>

Thank you for the opportunity to comment.



TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011

ON THE FOLLOWING MEASURE:

S.C.R. NO. 85 and S.R. NO. 70 REQUESTING THE ATTORNEY GENERAL
TO INVESTIGATE GEOTHERMAL ROYALTIES.

BEFORE THE:

SENATE COMMITTEES ON WATER, LAND AND HOUSING AND ON JUDICIARY
AND LABOR

DATE: Friday, April 1, 2011 TIME: 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Rodney I. Kimura, Deputy Attorney General

Chairs Dela Cruz and Hee and Members of the Committees:

The Department of the Attorney General requests that these resolutions be held. The information sought by the resolutions appears to be publicly available, and access to the information does not require an investigation. Additionally, the Department is concerned about certain of the recitations in the resolutions, the lack of specificity in the investigation requested, and the efficacy of the investigation.

The resolutions identify two issues associated with the Purchase Power Agreement between Puna Geothermal Venture (PGV) and Hawaii Electric Light Company (HELCO): (i) whether geothermal royalties paid by PGV are being passed on to HELCO, and whether HELCO is in turn is passing on the cost of the royalties to its ratepayers; and (ii) the method by which purchase power contract rates are set using the "avoided cost" formula. However, the practices questioned in the resolutions appear to be consistent with applicable federal law, as explained below.

In 1978, the Public Utility Regulatory Policies Act (PURPA) was signed into law as a part of a package intended to combat

the nationwide energy crisis. Certain provisions in PURPA, and regulations promulgated by the Federal Energy Regulatory Commission (FERC), establish an approach for rates associated with independent power arrangements such as those between PGV and HELCO. This approach calls for an assessment of the electric utility's "avoided costs" in comparison to the price of energy to be purchased from the independent power producer.

The term "avoided costs" is defined as "the incremental costs to an electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility. . . , such utility would generate itself" 18 C.F.R. § 292.101.

The independent power producer's rates are deemed to be just and reasonable to the ratepayers of electric utility and in the public interest if, generally speaking, such rates equal the avoided costs. 18 C.F.R. § 292.304(a)(2).

Under PURPA and the FERC regulations, the focus is not on a particular cost to the independent power producer such as royalty payments. Rather, the focus is on the electric utility's avoided costs relative to the overall rates proffered by the independent power producer. This has been and continues to be the approach established under PURPA and FERC's regulations. Therefore, the focus on geothermal royalties in the resolutions is not consistent with the process under the federal framework.

Regarding the investigation issues, the resolutions request the Attorney General to investigate certain issues associated with geothermal royalties. However, the issues are phrased generally, and their focus seems to be on data and matters of practice and policy, rather than legality. Generally, we believe that there are more appropriate avenues to address these

concerns, or that the concerns are too general to be meaningfully investigated.

The resolutions direct an investigation of the payment of geothermal royalties. To the extent there are questions as to whether royalties are being paid, who is paying such royalties, and how much is being paid, these information can be provided by the Department of Land and Natural Resources ("DLNR") upon request, without the need for an investigation by the Attorney General.

Second, the resolutions direct an investigation of the Special Land and Development Fund as it relates to deposits of geothermal royalties, but does not specify the particular areas of concern. Information relating to the amount of geothermal royalties deposited into the fund, and the disposition of such amounts, can be provided by DLNR upon request without the need for an investigation by the Attorney General.

Third, the resolutions direct an investigation into the adequacy of certain reports on all geothermal royalty dispositions. They do not, however, indicate specifically what inadequacy is to be investigated.

Fourth, the resolutions direct the Attorney General to investigate any matters deemed relevant to ensure that geothermal royalties are administered in a fair, legal, and ethical matter. They do not, however, indicate what "administered" includes and whether and to what extent there are current deficits in the administration of geothermal royalties.

As a final comment, we note that the resolutions refer to potential criminal activity associated with geothermal royalties. If there is a concern as to criminal activity, the concerns should be immediately directed to the appropriate law enforcement agency along with all available supporting materials

and leads. Then a criminal investigation should be conducted in accordance with the procedures used for a criminal investigation.

We ask that the Committees hold the resolutions, request information from DLNR, and assess the adequacy of the information. The need for an investigation and its focus can be assessed thereafter.

Thank you for the opportunity to provide comments.



STATE OF HAWAII
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Hawaii State Senate
Committee on Water, Land and Housing
Senator Donovan M. Dela Cruz, Chair
Senator Malama Solomon, Vice Chair

Committee on Judiciary and Labor
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Friday, April 1, 2011
Conference Rm. 016
9:00 am

RE: SR 70 – Testimony in **SUPPORT**

Aloha Chair Dela Cruz, Chair Hee, Vice Chair Solomon, Vice Chair Shimabukuro and members of the Senate Committees on Water, Land and Housing and Judiciary and Labor,

My name is Robert K. Lindsey, Jr., OHA Trustee-Hawaii Island and I am in support of SR 70. I am in support of having a process implemented to ensure that the accurate amount of royalties are received from the usage of geothermal resources and distributed to the areas previously designated (State, County and OHA) and also having community benefit.

Mahalo for the opportunity to testify.

Aloha,

Robert K. Lindsey, Jr.
Trustee – Hawaii
Office of Hawaiian Affairs

From: mailinglist@capitol.hawaii.gov
To: [WLH Testimony](#)
Cc: web@cartoonistforchrist.org
Subject: Testimony for SR70 on 4/1/2011 9:00:00 AM
Date: Thursday, March 31, 2011 12:44:12 PM

Testimony for WLH/JDL 4/1/2011 9:00:00 AM SR70

Conference room: 016
Testifier position: comments only
Testifier will be present: No
Submitted by: Lee McIntosh
Organization: Individual
Address:
Phone:
E-mail: web@cartoonistforchrist.org
Submitted on: 3/31/2011

Comments:

Mr. Chairs and Members of the Committee on Water, Land, and Housing and the Committee on Judiciary and Labor:

Aloha, my name is Lee McIntosh. I live in Kau on the Big Island. I have some concerns about SR 70 that I wish to share. Hawaiian Electric Light Company, Inc. is allowed to pass on costs to the customer, so why is Puna Geothermal Venture unjustly being singled out and told to absorb costs? Will another resolution be proposed to encourage Hawaiian Electric Light Company, Inc. to absorb costs, such as the proposed biofuel plant in Kau, instead of passing them on to the customer? Rather than require the Board of Land and Natural Resources to maintain geothermal royalties at a rate that does not harm geothermal production, maybe the Legislature should consider repealing geothermal royalties entirely. If the Legislature truly wishes to lower the cost of electricity, then I suggest the Legislature investigate a suggestion made by Senator Slom on deregulation of electric delivery. Hawaii needs to encourage competition, which will lower electric rates. Thank you for the opportunity to testify on SR 70.