

TESTIMONY OF HERMINA MORITA  
CHAIR, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
HOUSE COMMITTEE ON FINANCE

APRIL 3, 2012

**MEASURE:** S.B. No. 1197, S.D. 2, H.D. 1

**TITLE:** Relating to Energy

Chair Oshiro and Members of the Committee:

**DESCRIPTION:**

This measure allows the Commission to create a new grid reliability management rate surcharge for electric utilities to recover operational costs incurred under new or renegotiated power purchase agreements ("PPA") for renewable energy that do not contain provisions for either 1) rates based on an avoided cost methodology or 2) curtailment of renewable energy other than in an emergency. In addition, the Commission may allow electric utilities to earn a higher-than-usual rate of return for investments in assets to support new renewable energy generation facilities. Finally, the Commission is directed to request that all electric utilities, except electric utility cooperatives, seek the renegotiation of PPAs to eliminate renewable energy curtailment and avoided cost-based rates.

**POSITION:**

The Commission supports the intent of this measure, but we believe H.C.R. No. 224, H.D. 1, is a more appropriate vehicle for the Legislature to give guidance to the Commission. We would like to offer the following comments for the Committee's consideration.

**COMMENTS:**

It is essential the Commission retain flexibility to decide the best incentives and disincentives for encouraging the maximum penetration of renewable energy generation and the maintenance of electric system reliability. The Commission is currently

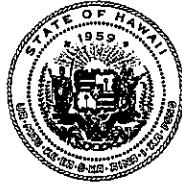
undertaking a number of docketed proceedings, such as Integrated Resource Planning for the Hawaiian Electric Companies<sup>1</sup>, and the Reliability Standards Working Group is investigating and reviewing the best cost effective methods for encouraging renewable energy generation. These investigations are necessary as mandates for specific regulatory actions, such as the creation of new surcharge and rate of return mechanisms, may have unintended consequences that could negatively affect Hawaii's ratepayers, independent power producers, electric utilities, as well as the reliability of the Hawaii electric system.

The sentiments of this measure have been expressed in H.C.R. No. 224, H.D. 1, which the Commission believes is a more appropriate vehicle for the Legislature to give its preferences and guidance.

Thank you for the opportunity to submit testimony on this measure.

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<sup>1</sup>The Commission opened Docket No. 2012-0036 on March 1, 2012, which initiated the new round of Integrated Resource Planning to collectively consider future resource options and strategies over a forward-looking twenty year time horizon for Hawaiian Electric Company, Inc., Maui Electric Company, Ltd., and Hawaii Electric Light Company.



NEIL ABERCROMBIE  
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TO THE HOUSE COMMITTEE ON FINANCE

THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

TUESDAY, APRIL 3, 2012  
3:00 P.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF  
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS, TO THE HONORABLE MARCUS R. OSHIRO, CHAIR,  
AND MEMBERS OF THE COMMITTEE

SENATE BILL NO. 1197, S. D. 2, H. D. 1 - RELATING TO ENERGY

DESCRIPTION:

This measure proposes to authorize the Public Utilities Commission (PUC) to establish a grid reliability rate surcharge to electric utility companies to encourage the negotiation of new or existing power purchase agreements with renewable energy producers that contain an avoided cost rate and generally eliminate curtailment. It also proposes to authorize the PUC to provide a higher rate of return for an electric utility company for capital investments made to support the integration of new renewable energy based power generation facilities.

POSITION:

The Consumer Advocate opposes Senate Bill No. 1197, S. D. 2, H. D. 1.

COMMENTS:

Hawaii's consumers pay the highest electricity rates in the nation. S. B. No. 1197, S. D. 2, H. D. 1, although well-intended, has the potential to add to electricity rates by creating a new surcharge by directing the PUC to establish a grid management rate based upon a percentage of the costs incurred under a new or renegotiated power purchase agreement with a renewable energy producer. Moreover, the proposed legislation authorizes a higher rate of return to an electric utility for capital investments for transmission, distribution, and grid reliability upgrades installed to support the connection to and integration of new renewable energy based power generation facilities. The new surcharge and the higher rate of return will be paid for by consumers on their electric bills.

Hawaiian Electric Company (HECO) already has in place a power purchase surcharge that has been authorized by the PUC. This surcharge gives HECO the ability to collect from ratepayers the HECO's costs associated with power purchase agreements.

The Consumer Advocate further notes that there is in existence the Renewable Energy Infrastructure Program (REIP) surcharge in Docket No. 2007-0416 that was approved by the PUC on December 30, 2009. This surcharge provides the electric utility with the ability to recover costs for: (1) projects that are needed to maintain the current renewable energy resource or connect a new renewable energy project to the electric utility's system; (2) projects that make it possible to accept more renewable energy on the electric utility's system; and (3) projects that encourage renewable energy choices for customers. The REIP cannot be used by the electric utility unless the PUC approves the renewable energy project and the use of the surcharge to recover the project costs. Given the REIP and the required PUC oversight, there would be no need for the provisions of S. B. No. 1197, S. D. 2, H. D. 1 that create a new surcharge and a higher rate of return for the utility for capital investments made that support the connection of new renewable energy based power generation facilities.

As an additional reason for its opposition, the Consumer Advocate points out that the higher rate of return provision of S. B. No. 1197, S.D. 2, H.D 1 would amount to single-issue rate-making, which is prohibited under general rate-making principles. Furthermore, the PUC already authorizes the electric utilities a fair, just, and reasonable rate of return that should be sufficient incentive for the utilities to make the infrastructure capital investments for transmission, distribution, and grid reliability upgrades that support the connection to and integration of new renewable energy based power generation facilities.

Senate Bill No. 1197, S. D. 2, H. D. 1  
House Committee on Finance  
Tuesday, April 3, 2012, 3:00 p.m.  
Page 3

Finally, the Consumer Advocate has concerns with the prohibition in this bill of provisions in power purchase agreements (PPA) relating to excessive curtailment of renewable energy. Curtailment is being addressed in the Reliability Standards Working Group, Docket No. 2011-0206. The Consumer Advocate respectfully requests that the parties to this docket and the PUC be given sufficient time to analyze the curtailment issue before legislatively prohibiting specific PPA provisions.

Thank you for this opportunity to testify.

# **Testimony before the House Committee on Finance**

**S.B. 1197, SD2, HD 1 -- Relating to Energy**

**Tuesday, April 3, 2012  
3:00 pm, Conference Room 308**

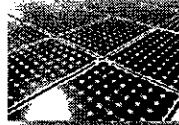
**By Barry Nakamoto  
Manager, Renewable Acquisition  
Hawaiian Electric Company, Inc.**

Chair Oshiro, Vice-Chair Lee and Members of the Committee:

My name is Barry Nakamoto. I am the Manager of the Renewable Acquisition Department at Hawaiian Electric Company. I am testifying on behalf of Hawaiian Electric Company and its subsidiary utilities, Maui Electric Company and Hawaii Electric Light Company.

Hawaiian Electric opposes S.B. 1197 SD2, HD 1 on the basis that restricting the electric utility's ability to curtail energy from independent power producers could have serious adverse consequences for our customers. While the Hawaiian Electric Companies appreciate that the language in the bill attempts to recognize the importance of grid reliability, there is still a concern that there could be unintended consequences with the interpretation of that language that could result in adverse impacts to safety and grid reliability, which would negatively affect our customers.

Thank you for the opportunity to testify.



## **HOUSE COMMITTEE ON FINANCE**

April 3, 2012, 3:00 P.M.

Room 308

**(Testimony is 3 pages long)**

### **TESTIMONY IN SUPPORT OF SB 1197 SD2 HD1, SUGGESTED AMENDMENT**

Chair Oshiro and members of the Finance Committee:

The Blue Planet Foundation supports SB 1197 SD2 HD1, a measure which authorizes the Public Utilities Commission (PUC) to establish a surcharge to encourage utilities to renegotiate power purchase agreements (PPAs) with renewable energy producers that contain an avoided cost rate. The measure also seeks to reduce the amount of clean energy curtailment by the utility. Blue Planet strongly supports efforts to renegotiate PPAs that are currently tied to the price of oil. The remainder of our testimony deals with the critical issue of curtailment and offers some amendments to SB 1197 SD2 HD1.

Curtailment of renewable energy resources is a significant barrier to Hawaii's clean energy future. Hawaii's largest electric utility company is essentially allowed to curtail renewable energy facilities without limit and without compensation. This not only directly limits the amount of renewable energy on the grid, it has a chilling effect on the ability to finance clean energy projects in Hawaii. With the threat of uncertain amounts of curtailment, developers are unable to properly evaluate financial risk. Absent reasonable certainty concerning financial risk, projects are unable to go forward. While it is difficult to eliminate all curtailment (such as curtailment necessary for reliability or technical issues), curtailment for economic reasons should be prohibited and other curtailment should be minimized.

This measure should be amended to establish reasonably certain parameters (such as maximum hours of curtailment limits and payment amounts) in power purchase agreements that allow developers and investors to properly evaluate risk and potentially move forward with financing and developing projects.

These proposed amendments are consistent with recent applications before the Public Utilities Commission (PUC) involving power purchase agreements for solar PV facilities. For example, in

Docket No. 2010-0307, the application includes language establishing limits and requiring the utility to provide appropriate compensation for curtailed energy<sup>1</sup>. Pursuant to this language, the utility agrees that it shall not be entitled to curtail the solar PV facility for more than a maximum of ninety hours per calendar year. If the utility curtails the facility in excess of the maximum amount, the facility shall be entitled to receive payment for 1.25 MWhs of curtailed energy for each hour curtailed from 8:00 AM to 7:00 PM<sup>2</sup>. These types of "floor" provisions on curtailment should be included in all future power purchase agreements. Amendments to HB 2041 to require this are proposed below.

With the requirement to pay for curtailed energy, system operators will likely curtail facilities more judiciously. The payment requirement will also incent utilities to further embrace curtailment mitigation measures.

### **SUGGESTED AMENDMENT**

Blue Planet suggests that SB 1197 SD2 HD1 be amended by adding the following language as a new subsection:

(x) Any agreement for the purchase of electricity generated from nonfossil fuel sources by an electric utility company from a producer of electricity from nonfossil fuel sources shall contain provisions that state that the utility shall not be entitled to curtail or interrupt a producer of electricity from nonfossil fuel sources for more than a maximum of number of hours per calendar year, as agreed upon by the producer of electricity from nonfossil fuel sources and the electric utility company, and that in the event the utility curtails or interrupts the producer of electricity from nonfossil fuel sources in excess of such maximum amount, then the producer of electricity from nonfossil fuel sources shall be entitled to receive payment for a prescribed percentage of the nonfossil fuel source electricity generating facility design capacity multiplied by the number of hours

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<sup>1</sup> See Application (Docket No. 2010-0307) filed Nov. 8, 2010 ("Application") at Exhibit 1, pp. 11-12.

<sup>2</sup> Actual language from the power purchase agreement: "The Parties agree that, regardless of the basis, the Cooperative shall not be entitled to curtail the Seller's Facility for more than a maximum 90 hours per calendar year. If and to the extent the cooperative curtails the Seller's Facility in excess of the maximum amount set forth above or otherwise in violation of this Section 15(c), then the then the Seller shall be entitled to receive payment for 1.25 MWhs of curtailed energy for each hour (or a pro-rated amount based on 60 minutes per hour if less than an hour) curtailed from 8am - 7pm (reduced by one-half of one percent (0.5%) per year to account for annual degradation from Sellers Facility) and the Cooperative shall pay Seller for the curtailed energy in accordance with Appendix B subject to the Dispute Resolution procedures of Appendix E. For the avoidance of doubt, the Parties agree that, in practice, the actual curtailments by the Cooperative could be substantially less than the maximum 90 hours per calendar year."



of curtailment or interruption from a prescribed time period each day, in excess of the prescribed number of hours per calendar year, multiplied by the applicable energy payment rate, except in an emergency situation that imminently threatens the electrical grid or due to a natural or manmade disaster.

We would be happy to work with the Committee on this language.

Thank you for the opportunity to testify.

**Subject: Testimony in Support of SB1197 SD2 HD1, suggested amendments**

Hearing: House EEP, FIN Room: State Capitol 308  
Date/Time: April 3, 2012, 3:00 PM  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Ulrich Bonne, Kailua-Kona, HI 96740; 808-324-0108  
Organization: Individual. Physicist, energy consultant & analyst  
E-mail: ulrichbonne@msn.com  
Submitted on: 4/2/2012, 10:00 am  
Comments:

**SB 1197 SD2, HD1** contains, in my opinion, many good and laudable intentions, such as:

- To promote and to facilitate the replacement of fossil fuel generated electricity and the implementation of smart-grid management.
- Eliminating PPAs with provisions for rates based on avoided (fossil fuel) costs; and \
- Eliminating "excessive" curtailments as defined on p. 2

However, I believe that: (1) SB119 could be fair and acceptable without the need to increase a utility's ROI (p. 2 Line 2) beyond the level approved before, as a utility company replaces fossil-fuel-generated with renewable electricity and invests in transmission, smart-grid management, etc., as part of normal capital equipment upgrades; and (2) Renegotiating PPAs may require some special provisions to induce IPPs (Independent Power Producers) to renegotiate their PPAs, because "None of the other IPPs have agreed to renegotiate their existing contracts" as per March 13 testimony by Scott Seu (HECO)

Therefore, in support of SB1197 SD2 HD1, I'd like to offer this amendment for your consideration:

1. On p. 2 Line 2 replace "provide a higher rate of return to an electric utility company for" with "allow higher depreciation rates for fossil fuel generators of an electric utility company, so that it can afford new" capital investments for transmission, etc Rationale: Renegotiating existing PPAs based on avoided costs may lead to lower costs to the utility company, while still allowing renewable electricity generators to achieve a "fair" ROI. Allowing higher depreciation rates for fossil-fired generators may result is larger business expenses and tax concessions. But I fail to see why either of these two cost effects need to be tied to higher PUC-allowed ROI or rate-payer surcharges
2. Include in SB1197 provisions to induce IPP contracts based on avoided (fossil fuel) costs to renegotiate existing PPAs, with due consideration of maintaining a "fair" ROI for the IPPs. Rationale:It seems reasonable to assume that lower renewable electricity prices are viable if curtailment is lowered as well, together with faster depreciation of fossil-fuel generation equipment, while retaining such only for grid-reliability emergencies

Respectfully submitted by Ulrich Bonne

References

Hearing: [http://www.capitol.hawaii.gov/session2012/hearingnotices/HEARING\\_FIN\\_04-03-12\\_2\\_.HTM](http://www.capitol.hawaii.gov/session2012/hearingnotices/HEARING_FIN_04-03-12_2_.HTM)

SB1197: [http://www.capitol.hawaii.gov/session2012/Bills/SB1197\\_HD1\\_.pdf](http://www.capitol.hawaii.gov/session2012/Bills/SB1197_HD1_.pdf)

Previous Testimonies: <http://www.capitol.hawaii.gov/session2012/testimony/>

Tuesday, February 01, 2011 1:05 PM 91885 [SB1197 TESTIMONY ENE-EDU 02-01-11.pdf](#)

Thursday, February 03, 2011 10:20 AM 261968 [SB1197 TESTIMONY ENE-EDU 02-01-11 LATE.pdf](#)

Friday, February 04, 2011 6:53 PM 292803 [SB1197 TESTIMONY ENE-EDU 02-03-11 LATE.pdf](#)

Friday, February 04, 2011 292803 [SB1197 TESTIMONY ENE 02-03-11 LATE.pdf](#)

Thursday, February 24, 2011 6:20 PM 142170 [SB1197 SD1 TESTIMONY WAM 02-25-11.pdf](#)

Tuesday, March 13, 2012 8:26 AM 195718 [SB1197 SD2 TESTIMONY EEP 03-13-12 .PDF](#)

Tuesday, March 13, 2012 12:24 PM 18859 [SB1197 SD2 TESTIMONY EEP 03-13-12 LATE .PDF](#)

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, April 02, 2012 10:08 AM  
**To:** FINTestimony  
**Cc:** ulrichbonne@msn.com  
**Subject:** Testimony for SB1197 on 4/3/2012 3:00:00 PM

Testimony for FIN 4/3/2012 3:00:00 PM SB1197

Conference room: 308  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Ulrich Bonne  
Organization: Individual  
E-mail: [ulrichbonne@msn.com](mailto:ulrichbonne@msn.com)  
Submitted on: 4/2/2012

Comments: