



**LATE TESTIMONY**

LAND USE RESEARCH  
FOUNDATION OF HAWAII

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March 30, 2012

Representative Marcus R. Oshiro, Chair  
Representative Marilyn B. Lee, Vice Chair  
House Committee on Finance

**Support of SB 2785, S.D. 2, H.D. 1 Relating to Interisland Electric Transmission Cable Systems (Establishes a regulatory structure for the installation and implementation of an interisland high voltage electric transmission cable system and for the construction of on-island transmission infrastructure.)**

**Monday, March 19, 2012, 2:00 p.m., in Conference Room 325**

My name is Dave Arakawa, and I am the Executive Director of the Land Use Research Foundation of Hawaii ("LURF"), a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. One of LURF's missions is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources and public health and safety.

LURF **strongly supports SB 2785, S.D. 2, H.D. 1** and encourages the legislature and the State to continue to work with the electric utility companies and other major stakeholders with respect to matters relating to the interisland electric transmission cable.

**SB 2785, S.D. 2, H.D. 1.** This bill establishes a "regulatory structure" for the installation and implementation of an interisland high voltage undersea electric transmission cable system and for the construction of on-island transmission infrastructure. This measure does not approve any particular renewable energy project; and nothing in this measure is intended to require the construction of any interisland cable from any particular island.

LURF also understands that this measure is consistent with, and does not violate the terms of the Hawaiian Organic Act which was passed by the United States Congress ("Congress") in 1900 and the Admissions Act, which was passed by Congress in 1959.

**LURF's Position.** Hawaii has an abundance of natural resources which could be used to create alternative energy – the sun, wind, waves, geothermal, etc. Given these natural resources, and being an island state, the State of Hawaii has had a long-standing objective of attaining energy independence from imported fossil fuels. The connection of Hawaii's islands via undersea high-voltage electric transmission cable systems is essential to achieve Hawaii's energy and economic objectives. It would also provide the islands with increased energy security and system efficiencies by enabling the islands to provide each other with backup electrical power.

The purpose of this bill is to establish the "regulatory structure" under which interisland undersea electric transmission cables can be developed, financed and constructed on

commercially reasonable terms. Establishing such a structure should reduce the costs of financing such projects, and will hopefully limit the impacts on rate payers. While this measure does not guarantee that an interisland cable system will be built; it attempts to ensure the predictability and certainty of the regulatory process in the event that a system is built.

In prior hearings, a Representative claimed that this measure violated Section 55, of the Hawaiian Organic Act ("Organic Act"), which was enacted by the United States (U.S.) Congress on April 30, 1900 to establish a Territorial government for the Territory of Hawaii. We understand that there is no merit to said claim, based on the following:

- **The terms of the Organic Act, referred to a "special or exclusive...franchise." and does not apply to a certificate of public convenience and necessity.** Section 55 of the Organic Act states in part that: "The legislature shall not grant to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise without the approval of Congress...."
- **SB 2785, S.D. 2, HD1 does not establish any "exclusive franchise."** As noted above, it merely establishes a "regulatory structure"; and would allow the Hawaii Public Utilities Commission ("PUC") to grant a certificate of public convenience and necessity ("CPCN") to a company constructing such a cable.
- **A CPCN is not a "franchise."** The Supreme Court of the Territory of Hawaii has held that "a certificate of public convenience and necessity is not a franchise as that term is employed in the inhibition of Section 55 of the Organic Act." *See, Territory of Hawaii v. Fung*, 34 Haw. 52 (1936).
- **The terms of the Organic Act, the Admissions Act and Hawaii State Constitution allow the State to repeal or amend laws imposed by the Hawaii Organic Act or other Territorial laws.**
  - Section 6 of the Organic Act (1900) states in relevant part, "That the laws of Hawaii not inconsistent with the Constitution or laws of the United States or the provisions of this Act shall continue in force, subject to repeal or amendment by the legislature of Hawaii or the Congress of the United States."
  - Section 15 of the Admission Act (1959), which established Hawaii's statehood in 1959, states in relevant part: "All Territorial laws in force in the Territory of Hawaii at the time of its admission into the Union shall continue in force in the State of Hawaii, except as modified or changed by this Act or by the constitution of the State, and shall be subject to repeal or amendment by the Legislature of the State of Hawaii...."
  - Hawaii State Constitution (1959), Art. XVIII, Section 9 Continuity of Laws, also provides: "All laws in force at the time amendments to this constitution take effect that are not inconsistent with the constitution as amended shall remain in force, mutatis mutatis, until they expire....or are amended or repealed by the legislature."

Based on the above, LURF is in **strong support of SB 2785, S.D. 2, HD1.**

Thank you for the opportunity to present testimony regarding this matter.



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**COMMITTEE ON FINANCE**

Rep. Marcus Oshiro, Chair  
Rep. Marilyn Lee, Vice Chair  
Friday, March 30, 2012  
5:00 p.m.  
Room 308

**OPPOSITION to SB 2785 SD2, HD1 - INTERISLAND ELECTRIC TRANSMISSION CABLE**

Aloha Chair Oshiro, Vice Chair Lee and Members of the Committee!

My name is Kat Brady and I am the Assistant Executive Director of Life of the Land, Hawai'i's own energy, environmental and community action group advocating for the people and the 'aina for over four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

I write this testimony in opposition to SB 2785 SD2, HD1 in my role as Vice President for Social Justice at Life of the Land. In this capacity, I have participated in numerous Public Utility Commission dockets. This bill seeks to establish a regulatory structure for the installation and implementation of an interisland high voltage electric transmission cable system and for the construction of an on-island transmission infrastructure.

I know I probably shouldn't be stunned by this bill, but right off the bat I find it interesting that we have been constantly told 'don't worry, we are only setting up the regulatory framework' when the bill's description says, **"...and for the construction of an on-island transmission infrastructure."**

As to establishing a regulatory structure for the installation and implementation of the cable, has the legislature already decided that this is the best option for our already over-burdened ratepayers? Why haven't communities on all islands been asked at least one simple question: "Should all the islands be interconnected or should each island be energy self-sufficient?" It seems to me that fairness demands that this is a discussion that must take place before the *state of O'ahu* decides what is in the best interest for each island. I am not saying that the cable is not a good idea; I am asking "What is the rush?" "What is driving this mad dash to spend billions of dollars?"

Page 14 (c) lines 16-20: *Notwithstanding any requirements to the contrary, a high-voltage electric transmission cable system may be deemed "used or useful for public utility purposes" upon commencing commercial operations, subject to the commission's determination and approval.*

It is my understanding that there are two (2) criteria that the PUC uses when rendering an opinion on an application:

1. That it is reasonable
2. That it is in the public interest

In a subsequent rate case they employ the 'used and useful' standard.

The 'used and useful' standard is for rate recovery, which has always meant that the project was needed for reliability. Therefore, it appears to me that the above-referenced section substantially changes this standard to "commencing commercial operations".

Page 15 lines 1-7: **§269-E Recovery of electric utility company costs.** (a) *An electric utility company may recover, through an automatic rate adjustment clause, its revenue requirement resulting from the capital costs that it prudently incurs for on-island transmission infrastructure; provided that the commission has approved the utility's commitment of capital expenditure costs for the project.*

Page 15 lines 16-22 and Page 16 lines 1-3: (c) *The electric utility company's revenue requirement shall include: (1) The commission-approved rate of return, as set in the electric utility company's last rate case, on the utility's net investment in the high-voltage electric transmission cable system from the acquisition date of the high-voltage electric transmission cable system, and in the on-island transmission infrastructure **from the date the on-island transmission infrastructure is completed and available for service;***

Does this mean that even if no other alternatives have been analyzed to accomplish the said purpose, that the cable can be built and once it is turned on, the company can seek rate recovery?

At a recent hearing, a PUC Commissioner told the committee that rate recovery is allowable if the cable has multiple purposes. Where, exactly, is that in statute?

Page 16 lines 21-22 and Page 17 lines 1-3: (1) *Allow the electric utility company to recover its 22 approved revenue requirement resulting from the capital costs that it prudently incurs for on-island infrastructure at the time that **the infrastructure is available for service;** or*

Does the legislature really intend to change the criteria/ for rate recovery? This seems patently dangerous with a utility that is desperately trying to remain whole. In my humble opinion, this opens up the door for our electric monopoly to build all sorts of unneeded projects to increase their infrastructure thereby guaranteeing that Hawai'i would never achieve increased energy independence because of the huge stranded costs that would over-burden the already over-burdened ratepayers. How fair and just is that?

Page 17 lines 9-20: (f) *If the electric utility company elects not to complete the on-island transmission infrastructure, and the commission approves this election, or the electric utility company is precluded from completing construction of the on-island transmission infrastructure, **the electric utility company shall be allowed to recover reasonable costs determined by the commission to have been prudently incurred by the electric utility company with***

*respect to the on-island transmission infrastructure. The electric utility company shall be allowed by the commission to recover the reasonable costs through the cable surcharge over a period equal to the period during which the costs were incurred or five years, whichever is greater.*

Wow! Wouldn't all businesses love to have this kind of clause in their contracts! In essence, if the cable turns out to be a bad idea and is not built, the ratepayers are burdened with the costs incurred for the planning. Ratepayers get gouged for a bad idea for which they were not even consulted!

Committee members, I have been very busy this session and this is the first opportunity I have had to go through this bill and I am horrified that while our communities are still struggling in this challenging economy, the legislature would even consider adding additional burdens onto our already stretched resources, especially for something for which all the alternatives have not been fully analyzed.

This cable appears to favor our energy monopoly that has dragged its feet on implementing real energy alternatives for the past twenty years, at the expense of the ratepayers.

I am really shocked that this bad bill has come this far.

Please take a look and think about the burden you are placing on the present and future generations to benefit one company – one monopoly – that has gouged our people for more than 100 years.

Mahalo for this opportunity to testify.



**KEKOA KALUHIWA  
FIRST WIND**

**TESTIMONY IN SUPPORT OF SB2785 SD2 HD1  
BEFORE THE  
HAWAII STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
COMMITTEE ON FINANCE**

**MONDAY, MARCH 30, 2012  
CONFERENCE ROOM 308  
5:00 PM**

Aloha Chair Oshiro, Vice Chair Lee, and Members of the Committee on Finance. My name is Kekoa Kaluhiwa and I am the Director of External Affairs for First Wind.

I respectfully request that you **support** SB2785 SD2 HD1 which establishes a regulatory structure under which interisland undersea transmission cables can be developed, financed and constructed on commercially reasonable terms, such as those upon which successful cable projects have been undertaken around the world.

First Wind has been developing and operating utility scale wind energy projects in Hawaii since 2006. We own and operate Kaheawa Wind Power on Maui (30 MW) and Kahuku Wind Power (30 MW) on Oahu. We are currently constructing a 21 MW project on Maui and a 69 MW project on Oahu. We are firmly committed to helping to improve Hawaii's energy security by decreasing its reliance on fossil fuels for its energy needs. We have a demonstrated record in establishing long-term dialogues and partnerships with the communities we join and we are proud of our accomplishments in establishing successful Habitat Conservation Plans for our projects which ensure a "net benefit" to native wildlife that could be affected by our projects.

While Hawaii has made great strides in utilizing renewable resources for its electricity needs in the past decade, much more needs to be done. Investment in long-term infrastructure in Hawaii is necessary to increase the use of Hawaii's robust renewable energy resources and to stabilize Hawaii's isolated island grids. There is little question that infrastructure upgrades will need to continue as Hawaii continues to move towards its goal of energy independence.

SB 2785 SD2 HD1 sets up a regulatory process that will provide for the establishment of interisland undersea transmission cables, if and when, it is necessary to use it. This bill is proactively creating a

Kekoa Kaluhiwa  
First Wind  
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process that can be utilized when stakeholders determine such action to be appropriate. Proactive actions like this one are important and prudent to ensure that Hawaii ratepayers can benefit from electricity rates in the future that are no longer tied to the volatile price of oil.

Mahalo for this opportunity to express First Wind's support for SB2785 SD2 HD1.