

SENATE COMMITTEE ON WAYS AND MEANS

March 1, 2011, 9:20 A.M.

Room 211

(Testimony is 5 pages long)

TESTIMONY IN SUPPORTING INTENT OF SB 99 SD1 WITH AMENDMENTS

Chair Ige and members of the Committee:

The Blue Planet Foundation generally supports SB 99 SD1, a measure to significantly restructure the public utilities commission (PUC). This measure seeks to structurally address some of the issues impeding the PUC's ability to fully execute their diverse and extensive duties. Blue Planet's testimony is directed solely at the energy obligations of the PUC.

Blue Planet generally supports many of the proposed changes in SB 99 SD1, including:

- Expanding PUC membership to five individuals;
- Bifurcating the PUC into two issue panels; and
- Creating an executive officer for the PUC.

We believe, however, that further policy changes are necessary for the PUC to effectively navigate Hawaii's transition to clean energy. We iterate some of those changes later in this testimony and we have attached amendments to achieve those preferred policy changes. We hope that they can be incorporated into future drafts of this measure.

Major changes in Senate Bill 99 SD1

The two major energy-related changes in SB 99 SD1 are the expansion of the PUC to five members and the establishment of two issue panels. While we are neutral on expanding the PUC to five members, we understand the value in increasing the number of voices and expertise on the commission, particularly to avoid situations where two members effectively control energy policy in Hawai'i. We also understand the desire to require that a minimum of two members be appointed from the neighbor islands, although we take no position on that policy.

We also support the intent behind creating two focused issue panels to give these subjects more dedicated attention. We are concerned, however, about the ability of the Chair to have the time and attention to dedicate to fully understanding the issues to make informed decisions if

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the chair's time is split across the individual panels (which are solely immersed in their subject area). We support the establishment of an executive officer position, much like the Land Use Commission, to guide the process and reduce the tasks of the chair of the commission.

Challenges requiring policy solutions within the Commission

Navigating the major transition to Hawaii's clean energy future requires a significant change in the regulatory structure. New policies are needed to align utility profitability with Hawaii's clean energy future, provide independent oversight of grid reliability and interconnection, and other changes. ***Senate Bill 99 should be the vehicle to implement these regulatory changes.***

Hawaii's electric utilities are currently regulated such that their fiduciary responsibility to advance the interests of their shareholders puts their goals at odds with the public interest in moving as rapidly as possible toward energy self-sufficiency. Existing laws give the utility little economic incentive to pursue clean energy projects. Long-term utility profits are tied mostly to capital investments that the utility makes, encouraging them to purchase expensive new plants or undertake major upgrades to existing ones. Since third-party renewable energy projects displace the need for utility investments, and energy efficiency reduces electricity use, the utility does not profit directly from such clean energy initiatives.

Further, adding substantial amounts of renewable energy and energy efficiency will render existing fossil generation facilities useless, leaving the utility holding the bag with "stranded" investments on their books. Finally, when the utility purchases power from independent power producers, like large solar farms, the utility is exposed to additional financial risk (something it can't afford, given its current credit rating of triple-B minus, one notch above junk bond status). These institutional barriers—decreasing sales on top of increasing costs to enable a system that doesn't help their bottom line—makes change incredibly difficult for the utility.

What's needed here is "institutional acupuncture." The Public Utilities Commission (PUC) should be directed to implement a "performance incentive mechanism" to reward the utility for achieving clean energy goals. This will give Wall Street reasons to invest in the utility and help fund Hawaii's clean energy transition. The PUC should also be given guidance to adopt a policy allowing for the recovery of the utility's "stranded assets," preventing these facilities from becoming anchors that restrain clean energy progress.

Changes also need to be made on a broader scale. Hawaii's current utility regulatory structure is a holdover from the 19th century. A vertically integrated monopoly that controls all aspects of electricity generation, transmission, and distribution no longer makes sense in a world where entrepreneurial independent power producers (including homeowners and business owners), enabled by technological advances, can develop Hawaii's renewable energy resources.

Hawaii's electric utilities control the economic conditions and pace at which clean energy investments occur in Hawai'i. The following problems arise:

- *Market signals.* There is a lack of transparent market price signals in Hawai'i because renewable energy projects can sell power only to utilities. This slows and hampers clean energy investment.
- *Utility control.* Utilities manage the price, terms and conditions and pace at which renewable projects are developed through control of Power Purchase Agreement (PPA) negotiations and competitive bidding processes.
- *New technologies.* Utilities determine when, at what pace, and the terms and conditions new technologies can be utilized to accommodate additional renewable generation (e.g., Demand response and storage, which can be used to provide ancillary services and supply capacity).

Change cannot and will not happen under the existing regulatory structure. Therefore, changes to the state's electricity markets must be undertaken with the goals of removing utility control over who gets to generate electricity and replacing it with control by a neutral entity the goal of which is to establish rules that will lead to energy self-sufficiency for Hawaii.

Regulatory solutions within the commission to accelerate clean energy

Policy solutions are available—and modeled elsewhere—to achieve the important regulatory objectives of the commission. These include:

- Establishment of a formal independent process to establish reliability and interconnection standards for clean energy;
- Legislative policy direction supporting the recovery of costs for “stranded assets,” to create a “performance incentive mechanism” to reward the utility for achieving clean energy goals;
- Unbundling ancillary services and perhaps electricity transmission and generation; and
- Adequate funding, staffing, and resources for the commission.

Independent reliability and interconnection standards

Ensuring reliable electricity while enabling private clean energy producers to access Hawaii's power grids requires the establishment of formal, objective, and verifiable reliability and interconnection standards. This is best achieved by replacing utility control of grid access with control by a neutral entity tasked with establishing reliability and interconnection rules that encourage clean energy development in all appropriate forms. Such a third-party oversight model for grid access has succeeded elsewhere in democratizing power production.

Hawaii's main utility is the only major electric utility system in the United States that is not subject to any formal and transparent bulk power electric reliability standards. Hawai'i was exempted from federal mandatory electric reliability standards applicable to all mainland electric utilities established by the North American Electric Reliability Corporation (NERC) and approved by the Federal Energy Regulatory Commission (FERC). Today there are no reliability standards

upon which to objectively assess impact of additional renewable energy projects, such as new distributed solar projects.

Hawaii's main utility's systems are not currently planned and operated according to NERC-equivalent reliability standards. Virtually all electric systems in the continental United States operate under NERC reliability standards. Hawaii's utility's systems are basically the same as other United States systems operating under NERC reliability standards insofar as all systems must maintain adequate voltage, balance supply and demand in real time, and maintain system stability. The experience of the Electricity Reliability Council of Texas and New Zealand demonstrates that formal reliability standards are appropriate and utilized not only in North America, but on isolated electric grids similar to those in Hawai'i.

Historically, a compelling need did not exist for formal bulk power electric reliability standards in Hawai'i, as Hawai'i was not electrically interconnected with the mainland, nor were individual island grids interconnected to each other. But with the increase in distributed power systems, the need for reliability and interconnection standards is clear.

Formal bulk power electric reliability standards and measures are essential to objectively assess grid reliability impacts for any electric utility and to insure reliable grid operation. Standards will:

- Provide an objective basis by which to measure the level of and trend in system reliability in general; and
- Provide an objective basis to measure the reliability impacts, if any, of incorporating increasing quantities of intermittent renewable energy resources.

Due to the absence of formal reliability standards, the Hawaii's main utility is at present under no requirement to publish official reports concerning compliance with standards. Reporting on compliance with formal reliability standards will allow verification and increased knowledge and understanding about reliability issues by the Public Utility Commission (PUC) and stakeholders.

Hawaii's clean energy transformation requires formal and transparent bulk power electric reliability standards. Since the potential exists for trade-offs between system reliability and greater utilization of renewable energy, it is essential to have bulk power electric reliability standards in place to provide a benchmark to measure over time the impacts of additional renewable energy integration. Further, formal and transparent electric reliability standards provide the reliability and operational rules of the road for various stakeholders: utilities, independent power producers, renewable energy developers, regulators, and others.

The process used by NERC to establish and maintain bulk power reliability standards is open, transparent and utilizes significant stakeholder involvement to develop and modify the standards. The hallmark of the NERC standard-setting process is that an entity other than the local utility manages the process and maintains an open and transparent process with substantial stakeholder participation. This also ensures that interested parties that may make

important substantive contributions to the standards and capacity determinations are not excluded from the process.

Reliability standards could be established by an independent council attached to the PUC, through a contract administered similar to the Public Benefits Fund for efficiency, or some other arrangement—as long as the standards are developed in a formal, objective, and independent manner. These standards for grid interconnection should then apply to all producers of clean energy who wish to access the electricity grid.

Aligning utility incentives with clean energy

To encourage greater utility support for integrating non-fuel renewable energy onto Hawaii's electricity grids, a policy should be established to allow for the recovery of the utility's "stranded assets"—existing power plants and other fossil facilities—preventing these facilities from becoming anchors that restrain clean energy progress. Further, the PUC should be required to consider a "performance incentive mechanism" to reward the utility for achieving clean energy goals. This will align the financial decision making within the organization with achievement of Hawaii's aggressive clean energy goals. It will also give Wall Street reasons to invest in the utility and help fund Hawaii's clean energy transition.

Finally, the PUC should be required to direct the electric utilities to "unbundle" or separate ancillary services and procure those services from non-fossil fuel sources. The Federal Energy Regulatory Commission (FERC) defines ancillary services as those "necessary to support the transmission of electric power from seller to purchaser given the obligations of control areas and transmitting utilities within those control areas to maintain reliable operations of the interconnected transmission system." Unbundling of such ancillary services is commonplace in other utility markets. This measure will create competitive markets that will most efficiently determine the suppliers and prices for many ancillary services. The bill also helps to foster Hawaii's clean energy future by requiring electric utilities to purchase ancillary services derived from sources other than fossil fuel (including but not limited to energy storage and demand response measures)—if feasible and reasonably economical.

Of course, none of the important PUC policy and regulatory work will be complete without proper funding and resources. Blue Planet fully supports allocating 100% of the Public Utilities Commission special fund to the PUC.

Please forward SB 99 SD1 with these added critical policy changes to help Hawai'i create a robust, modern power system that fosters innovation and puts Hawaii's clean, indigenous, and renewable energy sources to work for Hawaii's people. ***We have attached proposed language to achieve these policy goals. Blue Planet is happy to work with this Committee to further refine these amendments as necessary.***

Thank you for the opportunity to testify.

SECTION A. The Hawaii Revised Statutes § 269 is amended by adding three new sections to be appropriately designated and to read as follows:

§ 269-A Reliability standards. (a) The public utilities commission shall develop standards to ensure the reliability of electric systems in Hawaii. The reliability standards shall be modeled upon North American Electric Reliability Corporation bulk electric system reliability standards, modified by the commission as may be necessary and appropriate for Hawaii electric systems. All electric system owners, operators, and users shall comply with any applicable reliability standards.

(b) Reliability standards shall define the reliability requirements for planning and operating Hawaii electric systems, and shall define functions to be performed to ensure Hawaii electric systems operate reliably and in a manner that is fair, non-discriminatory, and consistent with state clean energy objectives. The reliability standards shall address resource and demand balancing, supply resource adequacy, transmission and distribution planning and operations, and voltage and reactive control, and may address other related areas. An electric utility company may not curtail renewable energy production unless such curtailment is necessary to prevent violation of a reliability standard.

(c) Reliability standards shall be developed pursuant to a process modeled upon the North American Electric Reliability Corporation standards development process, modified by the commission as may be necessary and appropriate to Hawaii electric systems; provided that the process shall provide reasonable notice and opportunity for public comment, due process, openness, a balance of interests, transparency, consensus-building, and timeliness.

(d) Significant disturbances and abnormal system events shall promptly be reported to the commission and the commission shall investigate such events, identify their causes, and publish findings in an effort to prevent and mitigate future such events.

(e) As directed by the commission, periodic reports concerning compliance with reliability standards shall be submitted to the commission, and the commission shall have access to real-time data and other information it deems necessary to monitor Hawaii electric systems for purposes of providing notification concerning significant disturbances and abnormal system events that may have the potential to affect electric system reliability.

(f) The commission shall maintain a list of registered entities subject to compliance with the reliability standards.

(g) The commission shall comply with all federal laws and rules related to national security, including but not limited to critical energy infrastructure information.

(h) For purposes of this section, "electric system" means facilities and equipment utilized for the generation, transmission and distribution of electricity.

§ 269-B. Reliability standards; compliance and enforcement. The public utilities commission may identify potential violations of reliability standards through self-reporting by owners, operators and users of specific incidents and events; information provided in annual compliance reports, audit reports, or other reports; information received by the commission from other industry participants; audits and other monitoring programs; and investigations by the commission. If the commission determines that any person has violated or is violating this section, the commission shall undertake enforcement pursuant to this chapter.

§ 269-C. Interconnection standards and procedures. (a) The public utilities commission shall prepare initial interconnection standards and procedures not less than eighteen months after the effective date of this act.

(b) The interconnection standards and procedures shall establish the technical requirements that govern interconnection to the transmission, sub-transmission, and distribution levels

of an electric system by generators of electricity, and by providers of electricity storage and services to aid the proper and efficient functioning of the electric system.

(c) The standards and procedures shall replace interconnection standards and procedures, and tariffs, in effect at the time they are prepared, and shall be based as may be reasonable and appropriate on model standards and procedures. Notwithstanding the foregoing, the commission shall govern interconnection upon the effective date of this chapter and shall utilize interconnection standards and procedures, and tariffs, in effect until such time that initial interconnection standards and procedures are prepared.

(d) The commission shall undertake technical studies necessary to evaluate compliance of the requested interconnection with the interconnection standards. The commission shall consult with the utility concerning any request to interconnect to an electric system; provided, however, that the commission shall retain final authority to approve or deny, at its sole discretion, any request to interconnect to the electric system.

(e) The commission shall grant any request to interconnect to an electric system, and shall direct the utility to complete the requested interconnection, upon a showing by the requesting party that interconnection will comply with all applicable

interconnection standards and procedures and is consistent with any applicable reliability standards.

(f) The commission may arrange for the conduct of research through contractual services with the University of Hawaii or any agency or other qualified persons concerning technical, engineering, economic, social, and environmental aspects of renewable energy development in the State.

(g) The commission shall do any and all things necessary to carry out its purposes, to exercise the powers and responsibilities given in this section, and to perform other functions required or authorized by law, including but not limited to contracting for services when required for the implementation of this section.

(h) The commission shall develop and maintain a comprehensive summary all interconnection requests, including progress toward clean energy goals, including but not limited to interconnection, aggregate amount of renewable energy to facilitate public knowledge and participation.

SECTION B. Chapter 269, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"§269-A Unbundling electricity supply and delivery tariffs. (a) The public utilities commission shall direct

electric public utilities to file unbundled tariffs that identify, classify, and functionalize the costs of the individual component services and ancillary services necessary to provide reliable electrical service. Costs and tariffs shall be supported by appropriate cost-of-service studies that reflect the full and actual costs of ancillary services. The unbundled tariffs shall be suitable to support the implementation of any wheeling tariff considered by the commission and shall be consistent with any wheeling tariffs adopted by the commission.

(b) The commission shall require electric public utilities to purchase ancillary services derived from sources other than fossil fuel, including but not limited to energy storage and demand response measures, if feasible and reasonably economical. The commission shall establish technical and operational requirements for the provision of ancillary services consistent with applicable reliability standards.

§269-B Stranded costs. (a) The public utilities commission shall consider measures to allow electric public utilities to recover stranded costs due to increased clean energy use; provided that the measures:

(1) Shall not result in the inequitable reallocation of cost between and among electric public utility customer classes; and

(2) May include a stranded cost recovery surcharge in conjunction with the transmission and distribution charge in the large customer direct renewable energy procurement program.

(b) For purposes of this section, "stranded costs" means fixed costs associated with undepreciated electricity generation, transmission, and distribution facilities and equipment that are replaced by clean energy, exclusive of mitigation measures that may reasonably be undertaken by an electric public utility, including the reduction or elimination of fuel, operation, and maintenance costs.

§269-C Utility incentive mechanism. The public utilities commission shall consider regulatory incentives to encourage clean energy use.

§269-D Intervention. The public utilities commission shall establish rules to encourage intervention in any commission proceeding. Intervention in any commission proceeding shall be granted if: (a) the applicant has a right to participate which is expressly conferred by statute or by commission rule, order or other action; (b) the applicant has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party; (c) the applicant's participation is in the public interest; or (d) no

answer in opposition to a timely motion to intervene is filed within fifteen days after the motion to intervene is filed.

SECTION C. No later than January 1, 2012, the public utilities commission shall initiate an investigation into the development and implementation of financial incentive mechanisms that may result in an increased authorized rate of return for electric public utilities based upon implementation and utilization of clean energy in quantities that significantly exceed the quantities prescribed by state energy objectives.

The public utilities commission shall report its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2013.

SECTION D. In codifying the new sections added by section 2 and section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION E. New statutory material is underscored.

SECTION F. This Act shall take effect upon its approval.

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March 1, 2011

Hon. David Ige and
Members of the Committee for the
Senate Ways & Means Committee

Testimony in SUPPORT OF
SB 99, S.D. 1 (PUC Structure)

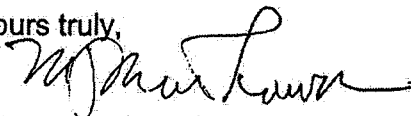
Dear Senator Ige and Members
of the Committee:

On behalf of the Keahole Defense Coalition, whom I represent, I offer this testimony in support of SB 99, S.D. 1. The coalition has been involved with several proceedings before the PUC on matters of great public importance and believe that SB 99, S.D. 1 advances the public interest.

The Coalition asks that the bill be amended to add further public interest protections not only for water carrier proceedings, but also for critical energy related proceedings, including rate making cases. As the law is presently structured, public participation is limited (see enclosed worksheet) because the PUC usually holds a single hearing "up front" when an application is filed. After all requisite fact finding is thereafter completed and when all interested persons are fully prepared for meaningful engagement, the law, as currently applied by the PUC, does not call for any further public hearings or public meetings at the most important stage of a proceeding, i.e., at the moment immediately prior to final argument and decision-making. In fact, the Sunshine Law does not require the PUC to hold an open meeting or to vote in public.

Again, the Keahole Defense Coalition supports SB 99, S.D. 1 and asks that it be expanded to include the suggested amendment. Thank you very much.

Yours truly,



Michael J. Matsukawa

ENC

c: Hon. Gilbert Kahele

WORKSHEET

and

PRIOR SUPPORT LETTER
To Hon. Rosalyn Baker

LAWS AT A GLANCE

269-16(b)

A contested case hearing shall be held in connection with any increase in rates, and the [contested case] hearing shall be preceded by a public hearing as prescribed in section 269-12(c) at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase. ...

91-9(d)

Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation agreed settlement, consent order, or default.

PUC Agency Rule HAR 6-61-55 (d)

Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.

92-6

This part [Sunshine Law] shall not apply ... to adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes.

AS LAWS ARE APPLIED, THE FOLLOWING OCCURS

Application Filed	Fact-Finding Starts	"contested case" hearing procedure waived by parties	Decision (no public hearing or meeting)
*-----#	*-----#	*-----#	*-----#----->
Public Hearing (first and only)	No Intervention Allowed (only parties left are utility and consumer advocate)		

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February 10, 2011

Hon. Rosalyn H. Baker
Hawaii State Senate
State Capitol, Room 230
Honolulu, Hawaii

Re: Support for SB 99 (PUC Restructuring)

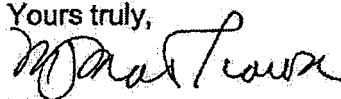
Dear Senator Baker:

My clients (the Keahole Defense Coalition) and I have been engaged with the Public Utilities Commission to advance the public interest in energy related projects and rate making for more than 15 years. During that time, we reached the conclusion that the PUC must be restructured and, therefore, support SB 99.

SB 99 could be improved by extending its mandatory public hearing and public meeting provisions to all "major" applications. For example, current statutes only require the PUC to hold a "public hearing" when the utility files its initial application. However, this initial meeting is only the start of a lengthy fact-finding process. When the application is ready for decision, current statutes allow the PUC to avoid a public hearing or meeting and to vote in private. Those statutes must be amended.

Further, the PUC's rules discourage public participation, allowing the utility and consumer advocate to "negotiate" an outcome in a non-public forum (without public overview or participation). Existing statutes allow this to occur and those statutes must be amended. Please feel free to call on me and my clients to assist you in this important effort. Thank you very much.

Yours truly,



Michael J. Matsukawa

ENC

SUGGESTED AMENDMENTS

SECTION ____ . Section 269-16 is amended to read as follows:

269-16. Regulation of utility rates; ratemaking procedures.

(h) In addition to the public hearings described above, the commission's decision-making shall be preceded by a further public hearing to allow the utility, its consumers and patrons and all interested persons to present further testimony relevant to the commission's proposed decision-making.

SECTION ____ . Section 92-6 is amended to read as follows:

92-6. Judicial branch, quasi-judicial boards and investigatory functions; applicability.

(b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory funds of the land use commission and the public utilities commission.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 28, 2011 9:23 PM
To: WAM Testimony
Cc: tropicalbreezekona@yahoo.com
Subject: Testimony for SB99 on 3/1/2011 9:20:00 AM

LATE

Testimony for WAM 3/1/2011 9:20:00 AM SB99

Conference room: 211
Testifier position: support
Testifier will be present: No
Submitted by: Peggy Ratliff
Organization: Keahole Defense Coalition
Address:
Phone:
E-mail: tropicalbreezekona@yahoo.com
Submitted on: 2/28/2011

Comments:

As a member of Keahole Defense Coalition, I support SB99, SD1 in the hopes that 5 people will have the integrity to consider all pertinent issues. To enable them to do that, the law must provide participation by the affected citizens and/or community at the most important stage of the proceeding, i.e. prior to final argument and decision-making. To allow anything less would be a travesty in our country.