



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

335 MERCHANT STREET, ROOM 310

P.O. Box 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011

WEDNESDAY, APRIL 06, 2011
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. 99, S. D. 2 – RELATING TO THE
PUBLIC UTILITIES COMMISSION.**

DESCRIPTION:

This measure establishes notice and fact-finding requirements for the issuance of a certificate of public convenience and necessity ("CPCN") for water carriers; expands the composition of the PUC to five members, with two Commissioners representing the counties of Hawaii, Kauai, and Maui; creates specialized subject-matter panels within the PUC; mandates the hiring of sufficient staff; creates the position of executive officer; requires electronic posting of information in connection with applications for CPCNs; bars interim or temporary orders for CPCNs except in state-declared emergencies.

POSITION:

The Consumer Advocate supports S. B. No. 99, S. D.2, with reservations.

COMMENTS:

The Consumer Advocate worked with Young Brothers, Limited and Senators Rosalyn Baker and Kalani English concerning the language of S. B. No. 99 (and S. B. No. 98). The Consumer Advocate had expressed concern that this legislation should not be overly broad so as to prevent the issuance of a Certificate of

Senate Bill No. 99, S. D. 2
House Committee on Finance
Wednesday, April 06, 2011, 3:00 p.m.
Page 2

Public Convenience and Necessity (CPCN) to an inter-island water carrier who proposes to transport primarily passengers. The language of the legislation that was agreed upon by the Consumer Advocate and Young Brothers, Limited, with the approval of both Senators Baker and English was as follows:

Page 18, beginning on line 20 and continuing on to page 19 up to line 5 should be numbered as paragraph (6) and should read as follows:

“(6) Issuance of the certificate would not permit an applicant to serve only high-margin or high-profit ports or lines of service that are currently served by an existing carrier; provided that an applicant shall not be considered to be in the same line of service as an existing cargo carrier if such applicant's proposed service is to transport primarily passengers and any cargo transported is accompanied by, and is incidental to the transport of, a passenger.”

Thank you for this opportunity to testify.

**TESTIMONY OF HERMINA MORITA
CHAIR, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON FINANCE
APRIL 6, 2011**

MEASURE: S.B. No. 99 SD2

TITLE: Relating to the Public Utilities Commission

Chair Oshiro and Members of the Committee:

DESCRIPTION:

This bill, among other things:

- Establishes notice and fact-finding requirements for the issuance of certificates of public convenience and necessity for water carriers;
- Expands the composition of the PUC to five members with 1) at least two commissioners representing the counties of Hawaii, Kauai, and Maui, provided these two commissioners shall not represent the same county, and 2) no more than two commissioners shall represent the same professional or occupational field;
- Creates two specialized subject-matter panels within the PUC, comprised of two commissioners plus the chairperson;
- Creates the position of executive officer;
- Requires electronic posting of information in connection with applications for certificates of public convenience and necessity; and
- Bars interim or temporary orders for certificates of public convenience and necessity except in state-declared emergencies.

POSITION:

The Commission defers to the Legislature but hope the following comments are seriously considered as the bill, as currently drafted, will have significant impacts to the structure and budget priorities of the PUC in carrying out its regulatory duties and functions.

COMMENTS:

- This bill subverts all efforts to reorganize the PUC in a reasonable way to address major staff and resource issues identified by a 2003 legislative audit and 2004 study done by the Hawaii Energy Policy Forum. The Legislature passed Act 177, SLH 2007 to adopt the reorganization plan, and Act 130, SLH 2010 to put the reorganization plan back on track after vacant and new positions were eliminated in the 2009 budget. The current PUC special funded employee count at the PUC is 51, including the 3 commissioners, as compared to the 62 positions recommended in the reorganization plan. Moreover, Act 180, SLH 2010 eliminated any relocation funding which makes it difficult for the PUC to fill approved positions because of space constraints.
- The bill provides that the number of commissioners will be increased from three to five commissioners and the bill states, "At all times, the commission shall include at least two commissioners representing the counties of Hawaii, Kauai and Maui." The Commission defers to the Legislature as to how many members should be on the Commission, and how the members of the Commission should be comprised and constituted. However, any residency requirements should be clearly specified, as the word "representing" can be open to many interpretations.
- With the addition of two more commissioners, an executive officer and other personnel, which this bill mandates, the cost to State Government will be significantly increased. An estimate of the total cost if the bill is fully implemented would be approximately \$700,000 annually, excluding any travel, lodging and per diem expenses if commissioners from islands other than Oahu are appointed and are not required to live here.
- In regard to the requirement that the Commission post a link to the front page of the Commission's website for each application for a Certificate of Public Convenience and Necessity ("CPCN") and the corresponding decision and order, the Commission notes that its staff resources are currently very limited and this action would require substantial time and resources. Our Docket Management System (DMS) already contains all the filings in our dockets and includes the ability to subscribe to a docket and receive email notification when any document is filed in the docket. Additionally, the public can subscribe to receive the Commission's daily activity reports. The Commission could place a list of active CPCN applications on its homepage with links to each of the dockets (where all the filings for that docket would be available), provided sufficient staff resources are available.

- The Commission defers to the Legislature as to whether the State's policy should be to prohibit the entry of additional water carriers into the market in Hawaii. This bill would make it extremely difficult, if not impossible, for companies to gain entry into the water carrier market in Hawaii. On page 18, line 20, the bill states, "the commission shall not make a finding of public convenience and necessity nor issue a certificate if the evidence in the record indicates that the issuance of the certificate will diminish an existing water carrier's ability to realize its allowed rate of return or if the certificate would allow an applicant to serve only high-margin or high-profit ports or lines of service that are currently served by an existing water carrier."

The Commission defers to the Legislature on what findings should be required to issue a CPCN, but this Committee should be aware that this paragraph, among others, would make it very difficult for any new water carrier to enter the market, which could give consumers fewer options for shipping goods intrastate.

- If it is the Legislature's intent to effectively and significantly improve the Commission's resources and structure so that it can implement the State's policies set forth by the Legislature and prevent history from repeating itself year after year, the Legislature must correct and repeal the statutory provision that provides for an automatic annual raid of the Commission's Special Fund, which are funds primarily made up of monies paid by regulated public utilities, and which are collected from customers to fund regulatory efforts. Section 269-33(d), HRS, provides: "All monies in excess of \$1,000,000 remaining on balance in the public utilities special fund on June 30 of each year shall lapse to the credit of the general fund." Millions of dollars from the Commission's special fund lapse into the general fund every year because of this statute. Further, a budget ceiling is imposed on the Commission's budget, which caps the amount of money that the Commission can use during the fiscal year, since any amounts not expended by the Commission in excess of \$1,000,000, are automatically transferred to the General Fund every year to help balance the State's budget. Last year, over 67% of the Special Fund lapsed into the General Fund. This severely handicaps the Commission in its ability to control and use its own funding. Repealing Section 269-33(d), HRS, and increasing the budget ceiling would enable the Commission to maintain a higher level of resources that is required to fulfill its statutory duties in today's more complex and demanding regulatory arena.

Thank you for the opportunity to testify.



Testimony to the House Committee on Finance

April 6, 2011

3:00 p.m.

Conference Room 308

Agenda #2

RE: SB 99 SD2 RELATING TO PUBLIC UTILITIES COMMISSION

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

The Chamber of Commerce of Hawaii is in general support of SB 99 SD2 relating to the Public Utilities Commission.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber of Commerce of Hawaii is concerned for the security and well-being of businesses and residents throughout Hawaii. For these reasons, The Chamber supports Senate Bill 99 SD2 based on its intent to:

- 1) Expand the PUC to ensure diverse representation (e.g. geographic diversity by ensuring the Neighbor Islands are represented; diversity in professional experience of Commissioners);
- 2) Ensure Hawaii's unique island economy has a viable water-cargo system and provider that will move freight of all kinds between islands reliably, consistently and safely at a reasonable cost.

The Chamber stands firmly in favor of competition – fair competition – in which the same rules apply to each competitor.

We believe the State's policymakers in years past had the foresight to create a regulated system to ensure reliable water-cargo service to meet public necessity across all islands. This policy recognized that efficiencies of scale and scope are needed to support the frequency and universal nature of service on all islands and, in addition, that certain places (islands and ports) will not

attract investment/resources unless part of a larger statewide system in which revenues and costs could be spread.

Changing the system, even on an interim basis, that will allow others to a lesser set of service obligations goes against the fairness principal. Unfairly changing the rules and injecting regulatory uncertainty into the system also puts at risk the capital-investment requirements for the existing system/carrier.

The Chamber also supports SB 99's requirement that each affected island community should be given an opportunity to voice its input and concerns. Such an "open" process will allow for all benefits/risks/consequences to surface and for thorough, transparent discussion to occur.

Thank you for this opportunity to express our views.



Hawaii Farm Bureau
F E D E R A T I O N

2343 Rose Street, Honolulu, HI 96819
PH: (808)848-2074; Fax: (808) 848-1921

April 5, 2011

TESTIMONY

Re: SB99 SD2 RELATING TO THE PUBLIC UTILITIES COMMISSION

Chair Oshiro and Members of the Committee:

Hawaii Farm Bureau Federation on behalf of commercial farm and ranch families and organizations in the State **strongly support SB99 SD2** reorganizing and clarifying the role of the Public Utilities Commission.

The actions of the PUC is of major concern to the agricultural industry. The viability of farmers and ranchers in Hawaii is largely dependent upon services provided by entities under the direction of the Public Utilities Commission. Recent decisions by the PUC make it imperative to clarify their decisionmaking process in law.

Most recently, in the case of PASHA Hawaii, **PUC seemed to go beyond its' authority creating new procedures while ignoring existing laws** such as the **Hawaii Water Carrier Act that requires fair and impartial regulation "without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices."** Through its' Pasha decision, the PUC is experimenting with users of interisland transportation services. Review of the D&O will reveal an unbalanced focus on Pasha and YB without serious consideration of the impacts on the users of the service ... the very mission of PUC. We are not attorneys, however, the current Water Carrier Act does not appear to provide for interim D&Os. What the law does provide for is a "temporary authority" for 120 days under near emergency conditions. The law does not prohibit competition. It does require that it be fair and just. For these reasons, **we disagree with PUC's prior testimonies that the existing law "makes it impossible for companies to gain entry into the water carrier market in Hawaii"**.

Farm Bureau submitted comments during the Pasha decisionmaking process including an affidavit expressing our concerns. They were virtually ignored and

impacts on consumers were given passing mention in the D&O. **We strongly support changes proposed in Section 2,5 and 6.**

Something needs to be done. We agree that the scope of responsibility for PUC has expanded not only in volume but in complexity. **Expansion of the number of members, and specifically those that understand neighbor island needs should provide increased capacity to address this need.**

In the Senate hearings, PUC referred to a statutory raid of funds collected from customers to fund regulatory efforts. **The cap associated with the fund to the PUC should be adjusted to meet the needs as identified in this measure.**

The efforts in the measure to improve communication to affected parties is critical. We believe that many were not aware of the Pasha certificate of need request and therefore did not express their opinions.

We respectfully request your strong support of this measure with appropriate funding. It impacts not only those of us in agriculture but every small business and consumer in Hawaii. We appreciate this opportunity to provide our opinion on this important matter. If there are questions, please contact Warren Watanabe at 2819718.



April 5, 2011

TESTIMONY

Re: SB99 SD2 RELATING TO THE PUBLIC UTILITIES COMMISSION

Chair Herkes and Members of the Committee:

Maui County Farm Bureau on behalf of commercial farm and ranch families and organizations **strongly support SB99 SD2** reorganizing and clarifying the role of the Public Utilities Commission.

Electricity, transportation and water are unavoidable and significant input costs for farmers and ranchers. In 2008, skyrocketing energy costs caused havoc among agricultural businesses and many reached deep into savings accounts to continue operations. In many cases, costs could not totally be passed on to customers and hence the incurred losses. In certain cases, it became the tipping point resulting in multigeneration farms going out of business.

Maui experienced loss of farmers during the last YB rate hike. The rate hike was not the cause but it was the last straw for struggling farmers. We therefore were very disturbed by the total disregard by PUC of our concerns of the potential negative impact of Pasha's entry into the marketplace. The D&O refers to revocation of the certificate if adverse conditions occur, without identifying what the adverse conditions are. If farmers and ranchers go out of business because of increased YB rates approved by the PUC due to increased costs forced upon them by the compensatory rate structure advocated by the commission, is this adverse? Too often we have been told by PUC that we have no proof ...that our fears are theoretical. Yet, we know, the increased rates that occurred due to changes in YB at the time of Superferry put some of our farmers out of business. If anything, the Pasha decision was Oahucentric disregarding needs of neighbor islands.

We respectfully request your strong support towards the passage of this measure. PUC refers to a statute that requires raiding of collected funds. Please seek to amend the cap associated with the fund so adequate resources will be available to carryout the intent of this measure. Thank you for this opportunity to provide our opinion on this matter. If there are any questions, please contact Warren Watanabe, Executive Director of MCFB at 2819718.

**Testimony to the House Committee on Finance
Wednesday, April 6, 2011; 3 p.m.
Conference Room 308**

RE: In Support of SB 99, SD2

Aloha Chair Oshiro, Vice Chair Lee and Members of this Committee,

My name is Vivian Landrum and I am the President/CEO of the Kona-Kohala Chamber of Commerce (KKCC). KKCC represents over 550 business members and is the leading business advocacy organization on the west side of Hawai'i Island. KKCC also actively works to enhance the environment, unique lifestyle and quality of life in West Hawai'i for both residents and visitors alike.

KKCC applauds SB 99 as it strives to make much needed changes to the public utilities commission. The proposed structural changes in the composition of the commission with the inclusion of a diversity of professional experience in that composition, will not only offer greater insight and understanding of neighbor island issues, but also will increase the knowledge bank required to make informed and educated decisions on matters that highly impact the economic well-being of the State. As reflected in the recent Pasha decision, it is strongly felt that the neighbor islands were not truly recognized nor represented during that decision-making process. The proposed five member commission with a commissioner from each county would ensure the interests of the entire State were represented.

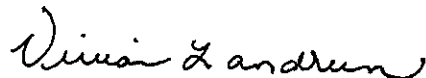
Seeking greater transparency in the approval process and requiring neighbor island public hearings is another modification we strongly support. Again, the neighbor island perspective is imperative when making decisions that impact the entire State. As noted in this Bill, "the State's water cargo industry is critical to the economic health of its island communities." All impacted "island communities" must be informed, consulted and heard before any decisions can be finalized.

KKCC supports competition in a business market, however feels this works well only when the rules are clearly defined and followed. The proposed changes for application for certificates of public convenience and necessity elucidate the requirements and provide a clear level of measurement to assist in the decision making process.

We strongly urge this Committee to support this legislature. The neighbor islands often face different economic challenges that Oahu does not, and need that recognition from this body. This Bill will help to correct that disparity with the public utilities commission.

Mahalo for the opportunity to submit our testimony.

Sincerely,



Vivian Landrum
President/CEO



HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)
1050 Bishop St. Box 235
Honolulu, HI 96813
Fax : 808-791-0702
Telephone : 808-533-1292

DATE: Wednesday, April 06, 2011 TIME: 3:00 P.M. PLACE: Conference Room 308

TO: COMMITTEE ON FINANCE
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

FROM: Hawaii Food Industry Association - Lauren Zirbel, Government Relations

RE: SB 99 RELATING TO THE PUBLIC UTILITIES COMMISSION

Chairs & Committee Members:

The Hawaii Food Industry Association supports this bill.

The Hawaii Food Industry Association is an organization made up of retailers, wholesalers, manufacturers, and brokers.

HFIA represents many neighbor island businesses that are greatly affected by the PUC's decision to alter the rules regulating inter-island carriers by changing from a CPCN (Certificate of Public Convenience and Necessity) requirement to carrier convenience.

HFIA is concerned with ensuring that all neighbor island ports receive an adequate supply of food within the necessary time frame for food to remain safe and fresh.

Hawaii Food Industry Association

1188 Bishop St. Suit 608
Honolulu, HI 96813

It has come to our attention that Pasha does not offer any refrigerated services and that their vessels are only designed for roll on roll off equipment such as trucks and autos. It has also come to our attention that although Young Brothers is required to offer all lines of service, some of which are subsidized by others, Pasha will not be required to provide all lines of service. HFIA is concerned that the PUC's decision may hinder Young Brothers' ability to subsidize less profitable lines of service to remote neighbor island communities and that this will negatively affect just in time delivery and even food security for these areas.

It is our position that the neighbor island communities affected by the PUC's decision should have been allowed more input prior to the PUC's decision.

This bill is an important step forward and it will help to rectify some of the problems that allowed decisions that did not incorporate neighbor island perspectives.

Thank you for the opportunity to testify.

**HOUSE COMMITTEE ON FINANCE
THE HONORABLE MARCUS R. OSHIRO, CHAIR
THE HONORABLE MARILYN B. LEE, VICE CHAIR**

SENATE BILL NO. 99, Senate Draft 2, scheduled for hearing on April 6, 2011

**Testimony of Roy Catalani, Vice President of Strategic Planning and Government Affairs,
Young Brothers, Limited**

Chair Oshiro, Vice Chair Lee, and Members of the House Finance Committee:

Thank you for the opportunity to testify on Senate Bill No. 99, Senate Draft 2 (*SB99 SD2*).

Young Brothers, Limited (*Young Brothers*) strongly supports SB99 SD2.

In the context of water carriers, Young Brothers respectfully submits that this bill addresses two critical issues of legislative policy that are of immediate concern:

- (1) Does a regulatory or competitive system best serve those who depend upon it, particularly Neighbor Island residents and businesses?
- (2) What is the appropriate legislative response where a State agency has permitted unfair competition?

Young Brothers believes a regulatory system best serves the public interest. However, whatever policy choice the Legislature makes, we respectfully submit that, in fairness, the same rules should apply to all those who seek to provide service. We appreciate and support the answers provided in this bill.

As the Committee well knows, Young Brothers is a water carrier regulated by the Hawaii State Public Utilities Commission (*PUC*). We transport cargo mainly to serve and support the State's Neighbor Island communities. And, as the Committee may also well know, a recent PUC decision allows a new carrier to serve only a profitable line of service on profitable routes (known as "cherry-picking"). This decision raises serious concerns for Young Brothers and, more importantly, for many Neighbor Island communities and their leadership: That is, without a legislative mandate, the PUC's decision changed the regime by which water carriers are to be regulated in this State and created an unfair playing field. The PUC decision allows a new property carrier to, in effect, operate on a competitive model, in which the new carrier has been allowed to choose the most profitable routes and the most profitable line of service. Young Brothers, on the other hand, operates on a regulatory model, and continues to fulfill an obligation to provide universal and frequent service, serving all islands as well as all lines of service. In contrast to the new carrier, Young Brothers' service is driven by public convenience and necessity rather than by the convenience and profitability of the carrier.

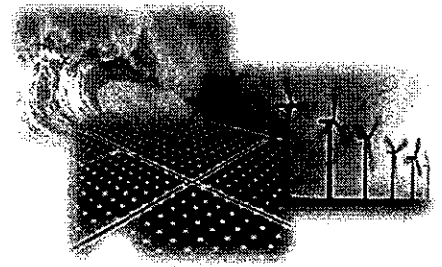
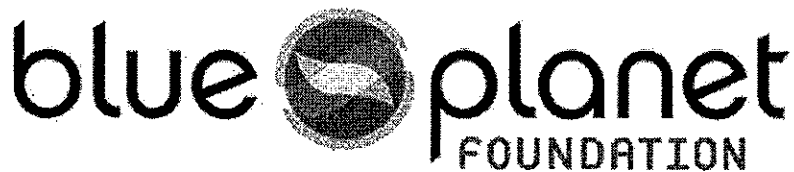
An unfair and unlevel playing field certainly hurts business, but inevitably and ultimately it hurts consumers. The current obviously unfair and unlevel playing field for water carriers is not only contrary to legislative policy, it has serious implications for the sustainability of the just-in-time, universal, and frequent system of service provided by Young Brothers to State residents. In this very capital-intensive industry, an unfair and unlevel playing field will diminish Young Brothers' ability to attract capital and, as a result, threatens the ability of Young Brothers to invest in and financially support the system that is essential to Neighbor Island economies and development. It is critical to recognize that this threat is to both larger and smaller neighbor islands – at risk is not only service to smaller Neighbor Islands, but the frequency of (just-in-time) service upon which larger Neighbor Islands depend.

In SB99 SD2, the Legislature rightfully takes back this issue of State policy and reaffirms longstanding State policy that the regulation of water carriers is based on fairness and *public* convenience and necessity rather than the convenience of any one carrier. This bill reiterates and clarifies the Legislature's policy with respect to regulation of water carriers. Among other things, the bill clearly enumerates the factors that the PUC should have considered, even under the law as it stands today, in determining whether an application for a water carrier certificate of public convenience and necessity, or CPCN, is in the public interest and meets the standard of public convenience and necessity.

In addition, SB99 SD2 proposes to restructure the PUC and its administrative staff to achieve fair representation of all island communities and to ensure that this agency is led and managed by commissioners and staff of "the highest possible levels of experience and expertise". SB99 SD2 addresses these concerns directly and significantly. The legislation ensures representation of Neighbor Island interests by proposing, among other things, a five-member PUC with at least two commissioners representing one of the (but not the same) counties of Hawaii, Kauai, or Maui. A two-panel structure is established, each comprising two commissioners devoted to specific utility issues and with the PUC chair sitting on each panel. It also proposes appointment of an executive officer of a caliber that allows commissioners to focus upon and address planning and policy matters affecting the State's essential utility services.

Except for the addition of two commissioners, SB99 SD2 does not require an increase in the PUC's staffing. The bill proposes the appointment of an executive officer but, at the same time, eliminates the requirement for the chief administrator position. And the proposed two-panel structure does not widen the jurisdiction of the PUC or increase the work required to be completed by supporting staff to administer and analyze matters within the jurisdiction of the PUC. The agency will continue to address the same regulatory issues as the current three-member commission. Notably, we do not assert that the PUC does not have staffing issues. However, the bill does not change any staffing issue that the PUC currently has – indeed, these staffing issues were the basis for increasing PUC fees – instead, these staffing issues, however one assesses them, exist whether one or two panels review the issues before the Commission.

Thank you for the opportunity to testify.



HOUSE COMMITTEE ON FINANCE

April 6, 2011, 3:00 P.M.

Room 308

(Testimony is 2 pages long)

TESTIMONY IN SUPPORTING INTENT OF SB 99 SD2, WITH COMMENTS

Chair Oshiro and members of the Committee:

The Blue Planet Foundation generally supports SB 99 SD2, 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 SD2, 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 hope that they can be incorporated into future legislation.

Major changes in Senate Bill 99 SD2

The two major energy-related changes in SB 99 SD2 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.

Should the PUC be expanded to five members, we support establishing two focused issue panels to give the regulated subject areas 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 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.

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.

We hope that the legislature will consider the following policy solutions in the future:

- Implementing a "performance incentive mechanism" to reward the utility for achieving clean energy goals, giving Wall Street reasons to invest in the utility and help fund Hawaii's clean energy transition;
- Providing the PUC guidance to adopt a policy allowing for the recovery of the utility's "stranded assets" (existing power plants and other fossil infrastructure investments), preventing these facilities from becoming anchors that restrain clean energy progress;
- Establishing formal independent process to establish reliability and interconnection standards for clean energy;
- Unbundling ancillary services and perhaps electricity transmission and generation; and
- Providing adequate funding, staffing, and resources for the commission.

Thank you for the opportunity to testify.

CARL FREEDMAN

HAIKU DESIGN & ANALYSIS

4234 Hana Hwy., Haiku, HI., 96708
(808) 572-2519

TESTIMONY TO THE
COMMITTEE ON FINANCE
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair

DATE: Wednesday, April 6, 2011
TIME: 3:00 p.m.
PLACE: Conference Room 308
State Capitol, 415 South Beretania Street

SB99 SD2 TESTIMONY AGAINST PUC RESTRUCTURING PROVISIONS

I am Carl Freedman, owner and principal of Haiku Design & Analysis, a small consulting business on Maui specializing in public utility regulatory affairs and long range utility planning.

This testimony is on my own behalf.

I have been working for many years in Hawaii to encourage and support constructive reforms to the PUC as chair of the Regulatory Reform Work Group of the Hawaii Energy Policy Forum and as author of a 2003 report for the Forum, Hawaii Energy Utility Regulation and Taxation.

I do not think the PUC restructuring provisions in SB99 would be effective. These provisions, as currently drafted in this bill would harm the speed, productivity and effectiveness of the Commission. Several aspects of the bill would create disruptive uncertainty in the administration of the Commission. For example:

- SB99 would have the majority of the commissioners assign each commissioner to one of two panels. The majority would select a Chair that would serve on both panels.
 - This arrangement would allow and even encourage factional instability in the organization of the commissioners. Since any three commissioners could agree to switch the assignments of the chair position and panel membership, any one commissioner in a majority of three would have the power to change the organization of the commissioners. This is not a stable configuration.
 - The Chair of the Commission would serve on both panels and would be the only commissioner participating in all proceedings. As required HRS 91-11 (Administrative Procedure), whenever the commission installs a different commissioner as Chair or switches the constituency of the panels, all dockets previously heard without the participation of any of the new panel members would have to allow for additional exceptions briefs and further hearings.

- The new position of executive officer created by SB99 would be tremendously important to the efficient and effective functioning of the Commission but, due to the uncertainties noted above and below, the executive officer position would not likely be filled by one individual for any substantial length of time.
 - Under existing statutes, the Commission Chair serves essentially as the CEO of the Commission with responsibilities to oversee all aspects of agency administration. Similar to most Hawaii agencies, the duties, responsibility and authority for agency administration are clearly understood and rest ultimately with a single individual. SB99 would transfer all administrative duties to a newly created executive officer position who serves at the will of the commissioners collectively. Ultimate responsibility and authority for agency administration, however, would be shared uncomfortably between the executive officer and a set of five commissioners.
 - SB99 does not explicitly state how the executive officer would receive direction from the commissioners, whether individual commissioners could discuss or give direction, whether the Chair could be delegated authority to provide direction or whether the Commission would have to meet and decide agency administrative matters by majority.
 - Similarly, the bill does not specify how the executive officer is selected, retained or excused of duties.
 - In short, the new executive officer position would be a tough rub. This is not a trivial concern.
- Although there is a clear desire being expressed to provide broader representation of neighbor island concerns by the Commission, moving towards constituency-based decision making by the commission is problematic.
 - The Commission must function effectively as an adjudicatory body. As such, it is the duty of each commissioner to set aside all constituency-based concerns sufficiently to make sound findings of fact and conclusions of law based exclusively on an evidentiary record. Failure to do so constitutes legal error. The Commission must not let constituency-based allegiances interfere with its core adjudicatory duties.
 - The Hawaii Commission on Water Resource Management is an example of what has essentially become a constituency-based commission that consequently has a very poor adjudicatory record with most of its contested cases reversed by the Hawaii Supreme Court.
 - Broader representation of neighbor island concerns can be provided by other more effective means:
 - requirements for conducting hearings on impacted islands (already addressed in SB99)
 - explicit legislative direction to consider all-island concerns or requirements to make explicit findings that all-island concerns have been considered and addressed

- review of incoming appointments to the Commission
- dissolution of the current statutory and administrative rule presumption that the Consumer Advocate can adequately represent all public interests in determining standing to intervene in hearings before the Commission (allowing all affected stakeholders and opportunity to petition to intervene in Commission dockets)

Any major restructuring of the Public Utilities Commission should be done very carefully to enhance the efficiency and effectiveness of the Commission. The provisions in SB99 are not sufficiently vetted and, as currently drafted, would harm rather than promote the purposes of the Commission.

For the reasons above I recommend against implementing the provisions in SB 99 that would restructure the PUC without substantial further consideration and modifications.

Respectfully submitted,

Carl Freedman