

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

FEBRUARY 10, 2014
2:45 p.m.

MEASURE: H.B. No. 1999, H.D. 1
TITLE: Relating to Electric Utilities

Chair McKelvey and Members of the Committee:

DESCRIPTION:

This measure would convene a legislative utility oversight task force (“Utility Task Force”) for the purpose of reviewing existing franchises held by investor-owned electric public utilities in the State “to ensure that these utilities are adequately providing services that serve the public.” The Utility Task Force shall also seek input publicly, as well as from the Public Utilities Commission (“Commission”) and the Consumer Advocate, in the course of its review. In addition, the Utility Task Force shall reconvene every five years and report to the Legislature its findings and recommendations every five years beginning in 2015. This measure has an effective date of July 4, 2014.

POSITION:

The issuance, modification, or revocation of an electric utility’s franchise is the prerogative of the Legislature. The Commission would like to offer the following comments for the Committee’s consideration.

COMMENTS:

The Commission has testified previously that a discussion related to major changes in the energy sector affecting the traditional electric utility service model is warranted.¹

¹See Testimony of Hermina Morita, Chair, Public Utilities Commission, Department of Budget and Finance of the State of Hawaii to the House Committee on

The basic terms of service under which electric utility companies operate are set forth in franchise agreements that are enacted through legislation.

As the regulation of public utilities evolved, a concept known as the “regulatory compact” was recognized. For a great many years, the regulatory compact was very straightforward. With respect to an electric utility, the regulatory compact required the utility to stand ready to provide all or the great majority of the electric service needs of all customers within its service territory. Stated differently, when the utility connected a new customer or when an existing customer purchased a new appliance, the electric utility was expected to have electric service available to meet those requirements “at the flip of a switch.” In return, the regulatory compact provided the electric company with the opportunity to earn a fair rate of return on and of the capital investment in electric plant necessary to stand ready to provide such service, and generally provided the utility with a monopoly to provide electric service within its service territory.

Over the past few years, the basis of the regulatory compact – that the utility provides all service requirements and that customers purchase all or most of their service requirements from the utility – has eroded, and continues to erode, dramatically. The proliferation of distributed generation, independent power producers, and other advancements in the energy sector have led to a far more complicated electric system than that which existed when Hawaii’s electric utility franchises were originally granted.² Today, customers need not take all of their electric service from the electric utility – they can generate some or most of their needs through the use of such technologies as solar panels. Nevertheless, at present, the electric utility is still required to stand ready to provide all of their service requirements when, for various reasons, they are unable to generate electricity from these intermittent sources. Thus, the regulatory compact has changed dramatically from the customers’ viewpoint, while the electric utility is still required to provide all service needs “at the flip of the switch.” This is true even though the electric utility may not recover the costs of providing that service, because the plant

Energy & Environmental Protection, H.B. No. 1999, Relating to Electric Utilities, January 30, 2014.

²Since 2005, the Legislature has increased the number of statutory exceptions to the definition of “public utility” under HRS § 269-1 at least four times, each addition encompassing a new exception for an energy-related operation. See Act 164, Session Laws of Hawaii 2005; see also Act 156, Session Laws of Hawaii 2009; see also Act 9, Session Laws of Hawaii 2011; see also Act 261, Session Laws of Hawaii 2013.

it built was designed to meet service requirements that no longer exist as more and more customers explore other ways of obtaining their electric service. In light of the changing landscape and complexity of the modern electric system, the Commission reiterates its belief that a review of the fundamental electric utility-customer relationship is warranted.

The Commission would like to caution the Legislature that if it initiates a review of an electric utility franchise, it must ensure that (1) proper resources are budgeted and allocated to obtain the required expertise on the subject matter, and (2) that the investigative process that is established is based on a framework that clearly establishes for all participants the elements of the franchise that will be reviewed, the criteria that will be used to evaluate those elements, and the procedures to be followed in making the evaluation. The Legislature also needs to be mindful that a review of a franchise without clarifying the associated review process and evaluation criteria could create uncertainty affecting the electric utility's financial position.

While the Commission may assist the Legislature in its review, please note that given the heavy workload of the Commission and the Consumer Advocate, many other priorities identified by the Commission or timetables for mandated statutory programs priorities may need to be readjusted to make this accommodation to assist the Legislature.

Thank you for the opportunity to testify on this measure.



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

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**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE**

**THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014**

**MONDAY, FEBRUARY 10, 2014
2:45 P.M.**

**TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE ANGUS L. K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE**

HOUSE BILL NO. 1999, H.D. 1 - RELATING TO ELECTRIC UTILITIES

DESCRIPTION:

This measure seeks to establish the Legislative Utility Oversight Task Force to review franchises held by investor-owned electric utilities and requires a report to the Legislature, commencing in 2015 and every five years thereafter.

POSITION:

The Division of Consumer Advocacy supports the intent of H.B. No. 1999, H.D. 1 but offers the following comments.

COMMENTS:

The Consumer Advocate appreciates the intent of the H.D.1, which is proposing to regularly evaluate investor-owned utility companies to “ensure that these utilities are adequately providing services that serve the public.” All utility companies should be held accountable for their duty to provide safe, reliable, high quality utility services at affordable rates.

Hawaii Revised Statutes (“HRS”) § 269-7 confers upon the Public Utilities Commission (“Commission”) the power and authority to investigate a wide range of matters related to public utilities including, but not limited to: the manner in which the utility is operated with reference to safety or accommodation of the public, the fares and rates charged by the utility, compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, and all matters of every nature affecting the relations and transactions between the utility and the public.

The Consumer Advocate appreciates the Legislature’s desire to hold the HECO Companies accountable to their franchise by creating this task force, although much of the work of the task force may be duplicative of what the Commission is already doing. The Consumer Advocate will, however, provide the appropriate support to the task force upon request.

Thank you for this opportunity to testify.

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE**

H.B. No. 1999, H.D.1

Relating to Electric Utilities

Monday, February 10, 2014

2:45 pm

State Capitol, Conference Room 325

Kevin M. Katsura
Associate General Counsel, Legal Department
Hawaiian Electric Company, Inc.

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

My name is Kevin Katsura and I am testifying on behalf of Hawaiian Electric Company and its subsidiary utilities Maui Electric Company and Hawai'i Electric Light Company in opposition to H.B. 1999, H.D. 1.

This bill establishes a legislative utility oversight task force to conduct a performance review of the Hawaiian Electric Companies. While it is the legislature's prerogative to review the utilities' franchises, utility performance is already extensively reviewed by the Public Utilities Commission ("PUC" or "Commission").

Last year, the legislature passed Act 37, Sessions Laws of the State of Hawaii 2013, which authorized the PUC to "establish a policy to implement economic incentives and cost recovery regulatory mechanisms, as necessary and appropriate, to induce and accelerate electric utilities' cost reduction efforts, encourage greater utilization of renewable energy, accelerate the retirement of utility fossil generation, and increase investments to modernize the State's electrical goals."

Utility performance is already extensively reviewed by the PUC through the powers granted to it by the legislature (HRS §269-6 - PUC's general powers and duties; HRS §269-7 investigative powers; and HRS §269-15 power to institute proceedings to enforce chapter). In addition, the Consumer Advocate is a party to all of the Commission proceedings by statute and conducts an in-depth review and evaluation of the Companies' submissions. The Commission monitors the Companies' performance on an on-going basis, as the Companies file more than 400 compliance and monitoring reports a year. These reports include Company plans as well as performance and progress in implementing programs, projects and operations (e.g., Annual Service Reliability Reports, Capital Budget Reports, Capital Project

Status and Completion Reports, Renewable Portfolio Standards ("RPS") Report, Adequacy of Supply, Integrated Resource Plans ("IRP") and 5-Year Action Plans, Monthly and Annual Financial Statements).

The Companies' performance is also reviewed through PUC proceedings.

The following are some examples:

- Rate Cases –Company rate case filings provide very comprehensive information. The Companies provide estimates for expense and capital expenditures in the test year for all of their regulated operations. The filings also provide very detailed information on their operations to support their estimates. The Commission and the Consumer Advocate conduct an in-depth review of this information and require the Companies to respond to numerous information requests. In the Hawaiian Electric 2011 rate case, the Company responded to more than 500 information requests (not counting subparts).
- Reliability Standards ("RSWG") (Docket No. 2011-0206) – The Commission is examining the implementation of reliability standards for the service territories of the Hawaiian Electric Companies
- Decoupling Investigation (Docket No. 2013-0141) – In this proceeding, one of the things that the Commission is addressing is whether metrics should be determined to measure utility performance and what metrics would be appropriate.
- IRP (Docket No. 2012-0036) – The Commission is evaluating the Companies' most recently filed IRP plans, as it does for each cycle of IRP plans.

Further, the legal status, procedures and protocols under which utility regulation operates have credibility that provides assurance to investors, large and small – assurance they need before investing billions to support capital projects that benefit utility customers. In utility cases, regulators use expert witnesses, due process, cross-examination, public appearances, written opinions with full explanations, and accountability to the judicial system -- professional and transparent, each reinforcing the other. All of these features are designed to make the regulator independent and objective, resulting in decisions that are equitable in the public interest.

Furthermore, a review of a utility franchise should at least be consistent with the review of a certificate of public convenience and necessity under Hawaii Revised Statutes ("HRS"), to review whether the utility is "in wil[[]]ful violation of any of the provisions of HRS, chapter 269 or with any lawful order or rule of the commission adopted thereunder, or with any term, condition, or limitation of the" franchise.

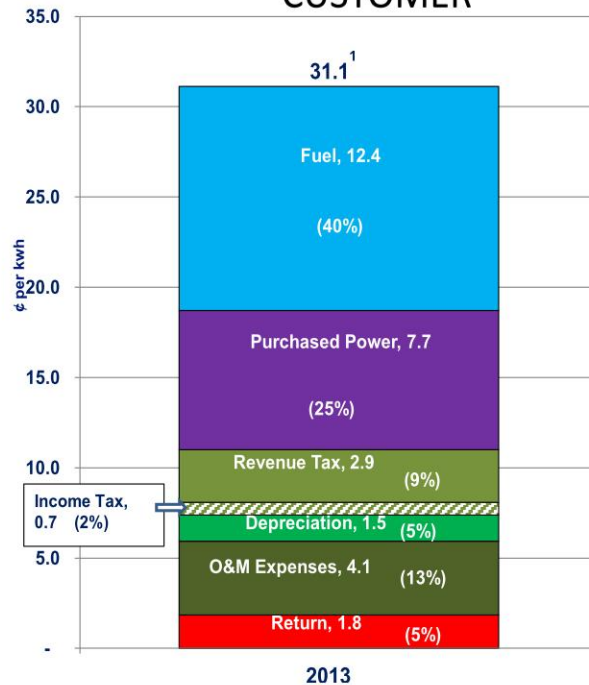
Finally, the Companies would like to offer the following comments:

(1) The franchises provided to the Hawaiian Electric Companies do not grant exclusive rights for the provision of electric service to customers;

(2) Uncertainty brought about by a change to the utilities' franchise could have the unintended consequence of lowering a utility's bond rating which could ultimately affect the cost to attract of the capital needed to support projects that benefit utility customers. This higher cost of capital would ultimately result in higher bills for utility customers, and jeopardize the ability of independent power producers, which rely on the Companies' credit, to obtain financing for their renewable energy projects;

(3) The Companies also are fully aware that the price of electricity in Hawai'i has increased significantly in the past several years, driven largely by higher fuel oil prices. Three components of our bill that are affected by higher oil prices, fuel, purchased power and taxes make up roughly 75% of our customer's bills.

HAWAIIAN ELECTRIC OAHU AVERAGE RATE PER CUSTOMER



¹ Hawaiian Electric Oahu average rate per customer

Aggressive actions like the Companies' effort to sharply reduce purchased power costs through waiver projects (e.g., Hawaiian Electric seeking PUC permission to negotiate contracts with 9 grid-connected renewable projects at an average cost of 15.8 cents per kilowatt-hour totaling more than 240 megawatts) and to bring LNG to Hawaii are among the actions we are taking on our own initiative to reduce costs to customers.

(4) The Companies' IRP action plans and strategic plans are focused on (1) reducing the utilities' cost to generate, transmit, and distribute power, (2) providing customers with information to enable better choices regarding their energy use; and (3) facilitating customers' ability to generate their own power using rooftop photovoltaics.

Thank you for this opportunity to testify.

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Angus L.K. McKelvey, Chair

RE: HB1999 HD1

February 10, 2014 2:45 p.m., Room 325

Aloha Chair McKelvey and Members of the Committee:

As a member of the rate-paying public, I **SUPPORT** this measure and offer the following amendment (underlined below) to section (c) for your consideration:

“(c) The committee shall meet publicly **AT LEAST ONCE ON EACH ISLAND SERVED BY AN INVESTOR-OWNED UTILITY** for input and recommendations regarding franchises held by investor-owned electric public utilities.”

Mahalo for this opportunity to testify.

Sally Kaye
511 Ilima Ave.
Lānaʻi City, HI 96763

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 08, 2014 12:20 PM
To: CPCtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB1999 on Feb 10, 2014 14:45PM*

HB1999

Submitted on: 2/8/2014

Testimony for CPC on Feb 10, 2014 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 09, 2014 1:52 PM
To: CPCtestimony
Cc: shannonkona@gmail.com
Subject: Submitted testimony for HB1999 on Feb 10, 2014 14:45PM

HB1999

Submitted on: 2/9/2014

Testimony for CPC on Feb 10, 2014 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Support	No

Comments: Support.

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kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 09, 2014 3:41 PM
To: CPCtestimony
Cc: leslie.cole-brooks@hsea.org
Subject: *Submitted testimony for HB1999 on Feb 10, 2014 14:45PM*



HB1999

Submitted on: 2/9/2014

Testimony for CPC on Feb 10, 2014 14:45PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Leslie Cole-Brooks	Hawaii Solar Energy Association	Support	No

Comments:

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LATE

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

February 10, 2014, 2:45 P.M.

Room 325

(Testimony is 2 pages long)

TESTIMONY IN SUPPORT OF HB 1999 HD1

Aloha Chair McKelvey and Consumer Protection & Commerce Committee members:

The Blue Planet Foundation supports HB 1999 HD1, establishing the Legislative Utility Oversight Task Force to review the performance of investor-owned electric utilities to ensure that the public good is best served given the rapidly changing energy landscape. We believe that this would be an appropriate response to recent utility concerns and a worthwhile exercise.

Change rarely comes easy for large institutions, particularly those, such as Hawaiian Electric, that have operated successfully for over a century delivering value to customers. But history shows that disruptive technology and market changes can unravel the most respected and seemingly durable of companies.

The Public Utilities Commission (PUC) understands this from their vantage as referee between utility service and utility profit. In responding to what they saw as a lack of a sustainable business model for the utility, the PUC took the unprecedented step last May of illuminating the regulatory path forward through an addendum to a docket decision¹ entitled “Observations and Perceptions.” It served as both a warning and an olive branch to the utility. They asked the utility to redefine itself for the new energy landscape, a territory where affordable energy is produced from rooftops and windfarms and other clean sources and must be stored and delivered intelligently. If they can navigate this transition by aligning shareholder return and ratepayer value and service, they will become the 21st century utility that others emulate.

For the past century, the utility has steadily expanded to meet growing demand and customer base. Hawaiian Electric progressively added powerplants and infrastructure capacity, first Honolulu powerplant, then Waiau around 1938 and Kahe around 1964. Fuel was relatively cheap, and the utility’s progress was reflected in healthy financial returns. The past few decades saw some expansion in generation as separate, independent power producers came online, selling electricity to the utility.

¹ Hawaii Public Utilities Commission Decision and Order No. 31288, In the Matter of the Application of Maui Electric Company, Limited, For Approval of Rate Increases and Revised Rate Schedule and Rules, May 31, 2013.

But the ground shifted in the past decade. Like their global counterparts, the utility is getting hit with the biggest changes in their history. The steady upward climb of demand has reversed and the utility has been selling less electricity each year for the past seven years. Fuel costs have been more volatile and higher than ever. The skyrocketing growth of renewable and distributed energy, such as solar on rooftops, has reduced demand further and introduced new challenges to grid management. Technological advances make clean energy and energy management more accessible than ever. On the horizon is a possibly destabilizing threat of customers simply leaving the utility behind as they generate—and store—their own energy.

The utility has taken some positive steps, with the addition of utility scale wind projects, seeking ways to add increasing amounts of solar on the grid, and installing load control technology on many electric water heaters, among other actions. The challenge now is how to make such steps part of a larger sustainable business model—while providing value and services at an affordable price to Hawaii's residents and businesses.

The utility has been trying to cope with these disruptive changes within the existing business model and power system. *But legacy systems aren't equipped to deal with disruptive change.*

The utility needs to re-imagine and re-design the value they provide. What does an electric utility look like in a world where customers can produce their own energy, where businesses want energy that doesn't change the climate, and where electric cars can store enough energy to power a home for days? To help answer that, look at what disruptive forces have done in other industries. The telecommunications industry of the 1970s is not recognizable today. The structure, technologies, and networks have evolved to provide new services and value.

For the electric utility, changes will likely push them completely out of the generation business—typically their bread and butter—into a new world of energy services and network management. In many ways, like the telecom industry, the utility is in the business of managing and moving electrons. But ultimately customers simply want the services that energy provides: hot water, lighting, communications, mobility, etc. Are there ways to deliver these services better and more affordably? If they can navigate this transition by aligning shareholder return with ratepayer value and service, they will become the 21st century utility that others emulate.

As the PUC's May 2013 order said, "attractive financial returns are not a utility entitlement." But developing the right system—the world-class system that other utilities emulate—should provide attractive value not only for the utility and its shareholders, but also for every resident in the state. As the PUC concluded, "the public interest demands no less." Blue Planet Foundation believes that HB 1999 HD1 will help identify how best to ensure that our investor-owned utilities provide that value.

This institutional evolution regarding how to regulate Hawaii's largest electric company will determine how the islands are powered for the next century. Thank you for the opportunity to testify.