



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
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

JO ANN UCHIDA TAKEUCHI
DEPUTY DIRECTOR

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

**THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013**

**MONDAY, FEBRUARY 25, 2013
2:30 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. 815, H.D. 1 - RELATING TO ELECTRIC COOPERATIVES

DESCRIPTION:

This measure proposes to direct the Public Utilities Commission ("PUC") and the Division of Consumer Advocacy ("DCA") to specifically consider the ownership structure and interests of an electric cooperative; and authorizes the PUC to waive or exempt an electric cooperative operating in the State from compliance with the provisions of Chapter 269, Hawaii Revised Statutes, as well as any other applicable charters, franchises, rules, decisions, orders, or any other laws.

POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") supports H.B. No. 815.

COMMENTS:

Electric utility cooperatives are required to act in the best interest of their member/owners. Unlike investor owner utilities ("IOU"), cooperatives are not profit-driven.

In various dockets involving Kauai Island Utility Cooperative ("KIUC"), the Consumer Advocate took the position that the Consumer Advocate would apply the same level of scrutiny to KIUC, in spite of its cooperative ownership model, because Hawaii Revised Statutes Chapter 269, did not provide for any exceptions for electric utility cooperatives. H.B. No. 815, H.D. 1 would provide the necessary exception, but at the same time provide adequate protection to the cooperative's member/owners by requiring the cooperative to apply for a waiver or exemption to the Public Utilities Commission.

In a hearing before the Senate Committee on Commerce and Consumer Protection on S.B. No. 1045 (the companion Senate bill), Chair Rosalyn Baker indicated that it was not the intent of this bill to exempt an electric utility cooperative from the renewable energy and energy efficiency policies established in Chapter 269. The Consumer Advocate, the PUC, and KIUC worked on an amendment and provided the following to Chair Baker:

SECTION 1. Electric cooperatives are fundamentally distinct from traditional electric utilities in terms of both governance and organizational purpose. The typical investor-owned utility is primarily driven by the incentive to increase shareholder profitability, with virtually no influence on policy or operations coming from the electricity customer. An electric cooperative, on the other hand, is a customer-owned organization operating on a not-for-profit basis under the governance of a board of directors democratically elected by the very same customers who receive the cooperative's services and who act in their role as owners and members of the cooperative. Whereas a natural tension exists between an investor-owned utility's profit motive and the interest of its customers, the nature of electric cooperatives provides multiple safeguards that ensure that the everyday user receiving electricity services has a say in determining whether that cooperative functions in the interests of both the organization and the individual consumers. Given these key distinctions between investor-owned utilities and electric cooperatives, the legislature finds that the public utilities commission and the department of commerce and consumer affairs, division of consumer advocacy, should at all times

recognize these differences and consider the degree and extent to which the State's utilities regulation laws - those laws that typically balance the tension between an investor-owned utility's profit motive and the interest of the customer – should be applied to electric cooperatives. Further, the legislature finds that the public utilities commission should have the flexibility and discretion to determine the applicability of existing regulatory requirements to electric cooperatives in furtherance of the public interest. In doing so, the legislature provides, however, that it is not the intent of this measure to exempt electric cooperatives from statutory Statewide “clean energy” policy mandates such as the State’s Renewable Portfolio Standards and Energy Efficiency Portfolio Standards.

The purpose of this Act is to specifically require the public utilities commission and the division of consumer advocacy to consider the ownership structure and interests of electric cooperatives, and to authorize the public utilities commission to waive or exempt electric cooperatives from the provisions of chapter 269, Hawaii Revised Statutes, and other regulatory requirements to the extent set forth in this Act.

The Consumer Advocate recommends that this committee adopt this suggested amendment to the preamble of H.B. No. 815, H.D. 1.

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 CONSUMER PROTECTION & COMMERCE

FEBRUARY 25, 2013
2:30 p.m.

MEASURE: H.B. No. 815, H.D. 1
TITLE: Relating to Electric Cooperatives

Chair McKelvey and Members of the Committee:

DESCRIPTION:

This bill would direct both the Public Utilities Commission (“Commission”) and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs (“Consumer Advocate”) to take into consideration the ownership structure and interests of electric utility cooperatives (“Cooperative”) when dealing with relevant matters. Further, the Commission would be authorized to waive or exempt Cooperatives from having to comply with certain regulatory laws when such compliance is determined by the Commission to be unjust, unreasonable, or not in the public interest.

POSITION:

The Commission strongly supports H.B. No. 815, H.D. 1 and would also like to offer the following comments for the Committee’s consideration.

COMMENTS:

Chapter 269, Hawaii Revised Statutes, is structured to provide regulatory oversight of investor-owned electric utilities. Cooperatives are member-owned and operate on a not-for-profit basis. Therefore, the Commission believes it would be appropriate to review laws and administrative rules for their applicability to the Cooperative model.

An application for a waiver or exemption must go through a proceeding, which includes the Consumer Advocate as a party, and may, at the discretion of the Commission,

include other qualified interveners or participants. The Commission believes this is a safeguard to protect the Cooperative member/ratepayer's and the public interest.

Concerns have been raised in earlier hearings on how this bill would impact statewide energy policy mandates, like the State's Renewable Portfolio Standards and Energy Efficiency Portfolio Standards. It is not the intent of the Commission to utilize its discretionary authority to usurp statewide policies, but it is, rather, to apply its discretionary authority judiciously where, for example, existing laws such as methodologies in the regulation of utility rates or ratemaking procedures may not directly apply to the Cooperative structure. As such, the Commission supports the proposed amendment to this measure's preamble that is being offered in testimony by the Consumer Advocate.

Thank you for the opportunity to testify on this measure.

Testimony Before the House Committee on
Consumer Protection & Commerce

By Michael Yamane, P.E.
Chief of Operations
Kauai Island Utility Cooperative
4463 Pahee Street, Suite 1, Lihue, Hawaii, 96766-2000

Monday, February 25, 2013, 2:30 p.m.
Conference Room #325

House Bill No. 815, HD1 – Relating to Electric Cooperatives

To the Honorable Angus L.K. McKelvey, Chair; Derek S.K. Kawakami, Vice-Chair,
and Members of the Committee:

Thank you for the opportunity to testify on this measure. I am Michael Yamane, Chief of Operations at Kauai Island Utility Cooperative (“KIUC”). I am here today to testify in strong support of HB 815, HD1.

As you know, KIUC is a member-owned electric cooperative. This means that KIUC is essentially owned by the very customers it serves. Every customer of KIUC has the right to be member/owner of the cooperative, and currently over 99.5% of KIUC’s customers are members of the cooperative. Electric cooperatives are not-for-profit, are owned by the very customers that they serve, and are member-run. KIUC has nine (9) Board of Directors who are elected by its membership (i.e., the customers that it serves) through a democratic process.

Without the need for profits and shareholder dividends, cooperatives utilize what would normally be profits (cooperatives call them "margins") and invest them back for the benefit of the cooperative – by either funding new capital projects and initiatives, by allocating margins to the cooperative's members as capital credit contributions, and, eventually, by making patronage capital refunds to its members; and otherwise generally using the monies collected for the general welfare of the cooperative members. In fact, in KIUC’s first ten years as a cooperative, KIUC has returned over \$20 million in patronage capital refunds back to its members. These are all monies that would not have been returned back to KIUC’s customers, and would have instead gone to shareholders, if KIUC was instead an investor-owned utility.

The above underscores that, as a cooperative, KIUC is inherently structured and committed to do what is in the overall best interests of its members – with one of those commitments being to reduce the island’s dependency on imported fossil fuels. This has been formalized in KIUC’s Strategic Plan, which calls for 50% renewable generation by 2023.

HB 815, HD1 will authorize and direct the Hawaii Public Utilities Commission is to specifically consider the ownership structure and interests of not-for-profit, consumer-owned electric cooperatives, and to take actions consistent with how best to regulate and oversee an electric cooperative. Specifically, this measure, if adopted, will provide the Commission with the appropriate flexibility and discretion to establish, streamline and ease the regulatory process and burden for an electric cooperative in the State to the extent it deems reasonable and in the public interest, while still ensuring adequate regulatory oversight and consumer safeguards as necessary or appropriate.

Thank you again for the opportunity to inform you of KIUC's position on this matter.



HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

February 25, 2013, 2:30 P.M.

Room 325

(Testimony is 1 page long)

TESTIMONY IN OPPOSITION TO HB 815 HD1, SUGGESTED AMENDMENTS

Chair McKelvey and members of the Consumer Protection & Commerce Committee:

The Blue Planet Foundation opposes HB 815 HD1 as currently written. This measure allows the Public Utilities Commission (PUC) to exempt an electric cooperative from Commission oversight and electric utility statutes, including Hawaii's renewable portfolio standards, energy efficiency portfolio standards, net energy metering, electricity reliability standards, solar water heater standards, and other policies guiding energy production and delivery. While we fully expect any member-owned electric cooperative in Hawaii to comply with our existing clean energy standards and rules, we must oppose this ceding of energy policy from the legislature to an electric cooperative.

Blue Planet fully recognizes the benefits of a cooperative ownership model for an electric utility. We applaud Kauai Island Utility Cooperative's (KIUC) efforts to aggressively add renewable energy to Kauai and modernize their utility grid. We believe that KIUC will continue these efforts.

In some areas, however, it is clear that state utility policy benefits customers, regardless of the utility organization type. For example, in one of the few areas where KIUC was exempted by the PUC from HRS 269—energy efficiency via the Public Benefit Fee Administrator (PBFA)—KIUC is currently lagging. On a per customer basis, electricity consumption has been declining more slowly on Kauai over the past six years than on all other islands that the PUC choose to include in the PBFA program. It is likely that this wouldn't be the case if the PUC included KIUC in the PBFA efficiency program.

Blue Planet **supports** reducing any unnecessary regulatory burden on the KIUC, particularly those PUC dockets where the KIUC is a party by default but their participation is not required. But utility policies regarding clean energy should apply to all utilities in Hawaii. The legislature should not cede state clean energy policy decision making to the PUC or an electric cooperative

regarding renewable portfolio standards, energy efficiency portfolio standards, net energy metering, solar water heater system standards, and other clean energy policies.

At a minimum, Blue Planet respectfully asks that HB 815 HD1 be amended to require that electric cooperatives comply with all state statutes regarding renewable energy, energy efficiency, and reliability standards and interconnection. Therefore, Blue Planet proposes the following amendment to the existing new language in HB 815 HD1, starting at page 4, line 3:

(b) Notwithstanding any provision of this chapter or any franchise, charter, law, decision, order, or rule to the contrary, the public utilities commission, sua sponte or upon the application of an electric cooperative, may waive or exempt an electric cooperative from any or all requirements of this chapter or any applicable franchise, charter, decision, order, rule, or other law upon a determination or demonstration that such requirement or requirements should not be applied to an electric cooperative or are otherwise unjust, unreasonable, or not in the public interest. The commission may not waive or exempt an electric cooperative from sections 269-16.4, 269-27.2, 269-27.5, 269-27.6, 269-32, 269-33, 269-44, 269-45, 269-71, 269-91, 269-92, 269-93, 269-94, 269-95, 269-96, 269-101, 269-101.5, 269-102, 269-103, 269-104, 269-105, 269-106, 269-107, 269-108, 269-109, 269-110, 269-111, 269-121, 269-122, 269-123, 269-124, 269-125, 269-141, 269-142, 269-143, 269-144, 269-145, 269-146, 269-147, 269-148, 269-149, nor may the commission waive or exempt an electric cooperative from any charter, decision, order, rule, or other law regarding renewable energy, energy efficiency, interconnection standards, or electric reliability standards.

(c) Notwithstanding the provisions in subsections (a) and (b), the public utilities commission and the consumer advocate shall at all times consider the ownership structure and interests of an electric cooperative in determining the scope and need for any regulatory oversight or requirements over such electric cooperative.

Thank you for this opportunity to testify.

kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 21, 2013 2:16 PM
To: CPCtestimony
Cc: jjkauai@gmail.com
Subject: Submitted testimony for HB815 on Feb 25, 2013 14:30PM

HB815

Submitted on: 2/21/2013

Testimony for CPC on Feb 25, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
jonathan jay	Individual	Oppose	No

Comments: Aloha Kakou. I offer testimony NOT in support of HB 815 at this time. If it is theoretically the case that co-ops have the support of their member/customers and therefore are not under the same need as private for-profits to be balanced by the PUC, then let 's allow those utility-co-ops to actually SHOW and DEMONSTRATE the support of the members, before relieving them of existing PUC regulatory burden. Example: if a matter comes up whereby a utility co-opative must come before the PUC for a determination on a course of action, IF THE CO-OP first held a member vote on the matter, or had a community & member public meeting on the subject where the majority of the members and community members were in favor, THEN the PUC could concretely SEE members and public were actually exerting their appropriate oversight, and the PUC should strongly consider deferring to member and public testimony wishes. In the absence of such mechanisms of accountability, all we have is the utilities word it is acting in the public interest. I trust KIUC, but it is also prudent to verify. This is the concrete interest of the Commission. After such a time when the benefits of the cooperative model are actually existing and transparently in place for all to SEE, THEN we can come back to this discussion, and I will loudly join others to champion the reduction of PUC oversight, that will be clearly appropriate to enact. Mahalo for your time for my testimony. jonathan jay, Kapa`a Kaua`i, HI 96746

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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