

HB 815, HD2

Measure Title: RELATING TO ELECTRIC COOPERATIVES.

Report Title: Electric Cooperatives; Waiver; Exemption; Public Utilities Commission; Division of Consumer Advocacy

Description: Directs the Public Utilities Commission and the Division of Consumer Advocacy to consider the ownership structure and interests of an electric cooperative in determining appropriate regulations. Authorizes the PUC to waive or exempt an electric cooperative from certain regulations. (HB815 HD2)

Companion: SB1045

Package: Gov

Current Referral: CPN

Introducer(s): SOUKI (Introduced by request of another party)



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 SENATE COMMITTEE
ON COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

TUESDAY, MARCH 19, 2013
9:30 A.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE

HOUSE BILL NO. 815, H.D. 2 - 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 the intent of H.B. No. 815, H.D. 2, but prefers S.B. 1045, S.D. 1.

COMMENTS:

There are non-substantive differences between H.B. No. 815, H.D. 2 compared to S.B. No. 1045, S.D. 1. The House version moves the definition of "electric cooperative" from Section 269-31 to Section 269-1, Hawaii Revised Statutes. It also separates out the second "Notwithstanding" provision into a separate subsection. The Consumer Advocate has no objection to these non-substantive changes.

The most significant difference in the House version compared to the Senate version is the deletion in H.B. No. 815, H.D. 2 of the terms "this chapter" and "other law" from the provision that sets forth the measures from which the electric cooperative may seek a waiver or exemption.

S.B. No. 1045, S.D. 1 reads in relevant part as follows:

[T]he 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. . . . (emphasis added)

H.B. No. 815, H.D. 2, on the other hand, reads in relevant part as follows:

[T]he 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 any applicable franchise, charter, decision, order, or rule. . . .

The House version would not allow an electric cooperative to request a waiver or exemption from any provision in Hawaii Revised Statutes Chapter 269, which would take away the very substance of the law. The Consumer Advocate therefore supports S.B. No. 1045, S.D. 1 over H.B. No. 815, H.D. 2.

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
SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION

MARCH 19, 2013
9:15 a.m.

MEASURE: H.B. No. 815, H.D. 2
TITLE: Relating to Electric Cooperatives

Chair Baker 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 "any or all requirements of any applicable franchise, charter, decision, order, or rule" when such compliance is determined by the Commission to be unjust, unreasonable, or not in the public interest.

POSITION:

The Commission supports the intent of this measure, but believes the language in this bill's Senate companion, S.B. No. 1045, S.D. 1, is preferable. The following comments are offered 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.

The Commission believes the current H.D. 2 version of H.B. No. 815 makes the scope of the Commission's ability to review and issue waivers or exemptions unclear and potentially overly broad. The intent of this measure has always been to ensure that the regulation of electric cooperatives in the State is done in a way that is most efficient, while providing the adequate legal and procedural safeguards to affected ratepayers within the bounds of the Commission's existing regulatory authority. For example, H.B. No. 815 has always included the requirement that 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. S.B. No. 1045, S.D. 1 contains the necessary language to guide the Commission and to protect the interests of members/ratepayers, and the Commission would ask the Legislature to consider moving the language in that measure forward.

Thank you for the opportunity to testify on this measure.

COUNTY COUNCIL

Jay Furfaro, Chair
Nadine K. Nakamura, Vice Chair
Tim Bynum
Gary L. Hooser
Ross Kagawa
Mel Rapozo
JoAnn A. Yukimura



OFFICE OF THE COUNTY CLERK

Ricky Watanabe, County Clerk
Jade K. Fountain-Tanigawa, Deputy County Clerk

Telephone (808) 241-4188
Fax (808) 241-6349
Email cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihue, Kauai, Hawaii 96766

March 13, 2013

**TESTIMONY OF JAY FURFARO
COUNCIL CHAIR, KAUAI COUNTY COUNCIL
ON**

**H.B. NO. 815, H.D. 2 RELATING TO ELECTRIC COOPERATIVES
Committee on Commerce and Consumer Protection**

March 19, 2013

9:30 p.m.

Conference Room 229

Dear Chair Baker and Committee Members:

Thank you for this opportunity to submit testimony in strong support of H.B. No. 815, H.D. 2, Relating to Electric Cooperatives. My testimony is submitted in my capacity as the Council Chair of the Kauai County Council.

I am in full support of H.B. No. 815, H.D. 2, which provides for the Public Utilities Commission (PUC) and the Division of Consumer Advocacy (DCA) to specifically consider and evaluate Kauai Island Utility Cooperative (KIUC) here on Kauai based on KIUC's not-for-profit ownership structure instead of an investor-owned structure. Hawaii Revised Statutes (HRS) Chapter 269 was enacted well before any electric cooperatives existed in Hawaii and this Bill will provide the PUC with statutory power to waive or exempt KIUC from any statute or other requirements upon finding that such requirements are unjust, unreasonable or not in the public's best interest. This Bill will support both KIUC and the State's renewable energy initiatives by streamlining the regulatory process for electric cooperatives, reduce cost of regulatory oversight of electric cooperatives and its members, and avoid duplication of compliance efforts required by Federal and State Agencies. This legislation was a collaborative effort by KIUC, the PUC, and the DCA to support the State's energy goals by easing the regulatory burden while still ensuring that regulatory oversight and consumer safeguards are intact.

For the reasons stated above, I am in strong support of H.B. No. 815, H.D. 2, and ask for your favorable support. Again, thank you for this opportunity to submit testimony.

Sincerely,

JAY FURFARO
Council Chair, Kauai County Council

AB:lc

COUNTY COUNCIL

Jay Furfaro, Chair
Nadine K. Nakamura, Vice Chair
Tim Bynum
Gary L. Hooser
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March 13, 2013

**TESTIMONY OF NADINE K. NAKAMURA
COUNCIL VICE CHAIR, KAUAI COUNTY COUNCIL
ON**

**H.B. NO. 815, H.D. 2 RELATING TO ELECTRIC COOPERATIVES
Committee on Commerce and Consumer Protection**

March 19, 2013

9:30 p.m.

Conference Room 229

Dear Chair Baker and Committee Members:

Thank you for this opportunity to submit testimony in strong support of H.B. No. 815, H.D. 2, Relating to Electric Cooperatives. My testimony is submitted in my capacity as the Council Vice Chair of the Kaua'i County Council.

I am in full support of H.B. No. 815, H.D. 2, which provides for the Public Utilities Commission (PUC) and the Division of Consumer Advocacy (DCA) to specifically consider and evaluate Kaua'i Island Utility Cooperative (KIUC) here on Kaua'i based on KIUC's not-for-profit ownership structure instead of an investor-owned structure. Hawai'i Revised Statutes (HRS) Chapter 269 was enacted well before any electric cooperatives existed in Hawai'i and this Bill will provide the PUC with statutory power to waive or exempt KIUC from any statute or other requirements upon finding that such requirements are unjust, unreasonable or not in the public's best interest. This Bill will support both KIUC and the State's renewable energy initiatives by streamlining the regulatory process for electric cooperatives, reduce cost of regulatory oversight of electric cooperatives and its members, and avoid duplication of compliance efforts required by Federal and State Agencies. This legislation was a collaborative effort by KIUC, the PUC, and the DCA to support the State's energy goals by easing the regulatory burden while still ensuring that regulatory oversight and consumer safeguards are intact.

For the reasons stated above, I am in strong support of H.B. No. 815, H.D. 2, and ask for your favorable support. Again, thank you for this opportunity to submit testimony.

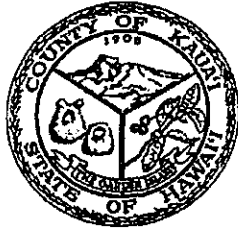
Sincerely,

NADINE K. NAKAMURA
Council Vice Chair, Kaua'i County Council

AB:lc

COUNTY COUNCIL

Jay Furfaro, Chair
Nadine K. Nakamura, Vice Chair
Tim Bynum
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March 13, 2013

TESTIMONY OF GARY L. HOOSER
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
H.B. NO. 815, H.D. 2 RELATING TO ELECTRIC COOPERATIVES
Committee on Commerce and Consumer Protection

March 19, 2013

9:30 p.m.

Conference Room 229

Dear Chair Baker and Committee Members:

Thank you for this opportunity to submit testimony in strong support of H.B. No. 815, H.D. 2, Relating to Electric Cooperatives. My testimony is submitted in my capacity as an individual member of the Kaua'i County Council.

I am in full support of H.B. No. 815, H.D. 2, which provides for the Public Utilities Commission (PUC) and the Division of Consumer Advocacy (DCA) to specifically consider and evaluate Kaua'i Island Utility Cooperative (KIUC) here on Kaua'i based on KIUC's not-for-profit ownership structure instead of an investor-owned structure. Hawai'i Revised Statutes (HRS) Chapter 269 was enacted well before any electric cooperatives existed in Hawai'i and this Bill will provide the PUC with statutory power to waive or exempt KIUC from any statute or other requirements upon finding that such requirements are unjust, unreasonable or not in the public's best interest. This Bill will support both KIUC and the State's renewable energy initiatives by streamlining the regulatory process for electric cooperatives, reduce cost of regulatory oversight of electric cooperatives and its members, and avoid duplication of compliance efforts required by Federal and State Agencies. This legislation was a collaborative effort by KIUC, the PUC, and the DCA to support the State's energy goals by easing the regulatory burden while still ensuring that regulatory oversight and consumer safeguards are intact.

For the reasons stated above, I am in strong support of H.B. No. 815, H.D. 2, and ask for your favorable support. Again, thank you for this opportunity to submit testimony.

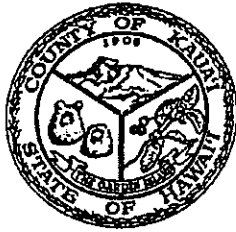
Sincerely,

GARY L. HOOSER
Council member, Kaua'i County Council

AB:lc

COUNTY COUNCIL

Jay Furfaro, Chair
Nadine K. Nakamura, Vice Chair
Tim Bynum
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March 13, 2013

**TESTIMONY OF JOANN A. YUKIMURA
COUNCILMEMBER, KAUA'I COUNTY COUNCIL
ON**

**H.B. NO. 815, H.D. 2 RELATING TO ELECTRIC COOPERATIVES
Committee on Commerce and Consumer Protection**

March 19, 2013

9:30 p.m.

Conference Room 229


Dear Chair Baker and Committee Members:

Thank you for this opportunity to submit testimony in strong support of H.B. No. 815, H.D. 2, Relating to Electric Cooperatives. My testimony is submitted in my capacity as an individual member of the Kaua'i County Council.

I am in full support of H.B. No. 815, H.D. 2, which provides for the Public Utilities Commission (PUC) and the Division of Consumer Advocacy (DCA) to specifically consider and evaluate Kaua'i Island Utility Cooperative (KIUC) here on Kaua'i based on KIUC's not-for-profit ownership structure instead of an investor-owned structure. Hawai'i Revised Statutes (HRS) Chapter 269 was enacted well before any electric cooperatives existed in Hawai'i and this Bill will provide the PUC with statutory power to waive or exempt KIUC from any statute or other requirements upon finding that such requirements are unjust, unreasonable or not in the public's best interest. This Bill will support both KIUC and the State's renewable energy initiatives by streamlining the regulatory process for electric cooperatives, reduce cost of regulatory oversight of electric cooperatives and its members, and avoid duplication of compliance efforts required by Federal and State Agencies. This legislation was a collaborative effort by KIUC, the PUC, and the DCA to support the State's energy goals by easing the regulatory burden while still ensuring that regulatory oversight and consumer safeguards are intact.

For the reasons stated above, I am in strong support of H.B. No. 815, H.D. 2, and ask for your favorable support. Again, thank you for this opportunity to submit testimony.

Sincerely,



JOANN A. YUKIMURA
Councilmember, Kaua'i County Council

AB:lc

COUNTY COUNCIL

Jay Furfaro, Chair
Nadine K. Nakamura, Vice Chair
Tim Bynum
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March 13, 2013

**TESTIMONY OF TIM BYNUM
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON**

H.B. NO. 815, H.D. 2 RELATING TO ELECTRIC COOPERATIVES

Committee on Commerce and Consumer Protection

March 19, 2013

9:30 p.m.

Conference Room 229

Dear Chair Baker and Committee Members:

Thank you for this opportunity to submit testimony in strong support of H.B. No. 815, H.D. 2, Relating to Electric Cooperatives. My testimony is submitted in my capacity as an individual member of the Kauai County Council.

I am in full support of H.B. No. 815, H.D. 2, which provides for the Public Utilities Commission (PUC) and the Division of Consumer Advocacy (DCA) to specifically consider and evaluate Kauai Island Utility Cooperative (KIUC) here on Kauai based on KIUC's not-for-profit ownership structure instead of an investor-owned structure. Hawaii Revised Statutes (HRS) Chapter 269 was enacted well before any electric cooperatives existed in Hawaii and this Bill will provide the PUC with statutory power to waive or exempt KIUC from any statute or other requirements upon finding that such requirements are unjust, unreasonable or not in the public's best interest. This Bill will support both KIUC and the State's renewable energy initiatives by streamlining the regulatory process for electric cooperatives, reduce cost of regulatory oversight of electric cooperatives and its members, and avoid duplication of compliance efforts required by Federal and State Agencies. This legislation was a collaborative effort by KIUC, the PUC, and the DCA to support the State's energy goals by easing the regulatory burden while still ensuring that regulatory oversight and consumer safeguards are intact.

For the reasons stated above, I am in strong support of H.B. No. 815, H.D. 2, and ask for your favorable support. Again, thank you for this opportunity to submit testimony.

Sincerely,

TIM BYNUM
Councilmember, Kauai County Council

AB:lc

COUNTY COUNCIL

Jay Furfaro, Chair
Nadine K. Nakamura, Vice Chair
Tim Bynum
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March 13, 2013

TESTIMONY OF MEL RAPOZO
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
H.B. NO. 815, H.D. 2 RELATING TO ELECTRIC COOPERATIVES
Committee on Commerce and Consumer Protection
March 19, 2013
9:30 p.m.
Conference Room 229

Dear Chair Baker and Committee Members:

Thank you for this opportunity to submit testimony in strong support of H.B. No. 815, H.D. 2, Relating to Electric Cooperatives. My testimony is submitted in my capacity as an individual member of the Kauai County Council.

I am in full support of H.B. No. 815, H.D. 2, which provides for the Public Utilities Commission (PUC) and the Division of Consumer Advocacy (DCA) to specifically consider and evaluate Kauai Island Utility Cooperative (KIUC) here on Kauai based on KIUC's not-for-profit ownership structure instead of an investor-owned structure. Hawaii Revised Statutes (HRS) Chapter 269 was enacted well before any electric cooperatives existed in Hawaii and this Bill will provide the PUC with statutory power to waive or exempt KIUC from any statute or other requirements upon finding that such requirements are unjust, unreasonable or not in the public's best interest. This Bill will support both KIUC and the State's renewable energy initiatives by streamlining the regulatory process for electric cooperatives, reduce cost of regulatory oversight of electric cooperatives and its members, and avoid duplication of compliance efforts required by Federal and State Agencies. This legislation was a collaborative effort by KIUC, the PUC, and the DCA to support the State's energy goals by easing the regulatory burden while still ensuring that regulatory oversight and consumer safeguards are intact.

For the reasons stated above, I am in strong support of H.B. No. 815, H.D. 2, and ask for your favorable support. Again, thank you for this opportunity to submit testimony.

Sincerely,

MEL RAPOZO
Councilmember, Kauai County Council

AB:lc

COUNTY COUNCIL
Jay Furfaro, Chair
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Email cokcouncil@kauai.gov

Council Services Division
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Lihu'e, Kaua'i, Hawai'i 96766

March 13, 2013

TESTIMONY OF ROSS KAGAWA
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
H.B. NO. 815, H.D. 2 RELATING TO ELECTRIC COOPERATIVES
Committee on Commerce and Consumer Protection
March 19, 2013
9:30 p.m.
Conference Room 229

Dear Chair Baker and Committee Members:

Thank you for this opportunity to submit testimony in strong support of H.B. No. 815, H.D. 2, Relating to Electric Cooperatives. My testimony is submitted in my capacity as an individual member of the Kaua'i County Council.

I am in full support of H.B. No. 815, H.D. 2, which provides for the Public Utilities Commission (PUC) and the Division of Consumer Advocacy (DCA) to specifically consider and evaluate Kaua'i Island Utility Cooperative (KIUC) here on Kaua'i based on KIUC's not-for-profit ownership structure instead of an investor-owned structure. Hawai'i Revised Statutes (HRS) Chapter 269 was enacted well before any electric cooperatives existed in Hawai'i and this Bill will provide the PUC with statutory power to waive or exempt KIUC from any statute or other requirements upon finding that such requirements are unjust, unreasonable or not in the public's best interest. This Bill will support both KIUC and the State's renewable energy initiatives by streamlining the regulatory process for electric cooperatives, reduce cost of regulatory oversight of electric cooperatives and its members, and avoid duplication of compliance efforts required by Federal and State Agencies. This legislation was a collaborative effort by KIUC, the PUC, and the DCA to support the State's energy goals by easing the regulatory burden while still ensuring that regulatory oversight and consumer safeguards are intact.

For the reasons stated above, I am in strong support of H.B. No. 815, H.D. 2, and ask for your favorable support. Again, thank you for this opportunity to submit testimony.

Sincerely,

ROSS KAGAWA
Councilmember, Kaua'i County Council

AB:lc



Testimony Before the Senate Committee on
Commerce and Consumer Protection

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

Tuesday, March 19, 2013, 9:15 a.m.
Conference Room #229

House Bill No. 815, HD2 – Relating to Electric Cooperatives

To the Honorable Rosalyn H. Baker, Chair; Brickwood Galuteria, 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 testifying on behalf of KIUC, and in support of the intent of HB 815, HD2, but offer the following comments and recommendations.

Although KIUC supports the intent of HB 815, HD2, KIUC has substantial concerns with the language in HD2. As currently drafted, HD2 does not sufficiently carry out the intent of this measure. As stated in the preamble to HD2, one of the purposes of this measure is to "authorize the public utilities commission to waive or exempt electric cooperatives from the provisions of chapter 269, Hawaii Revised Statutes ["HRS"], and other regulatory requirements, to the extent set forth in this Act." Despite this intent, the plain reading of HD2 does not actually give the Commission authority to waive or exempt electric cooperatives from any provisions of HRS Chapter 269 and other associated regulatory requirements. Although HD2 does give the Commission the power to waive or exempt electric cooperatives from provisions in a franchise, charter, decision, order or rule, most of the regulatory requirements that are imposed upon electric utilities and electric cooperatives and that provide the Commission with its regulatory authority are found in HRS Chapter 269. These changes also ignore the existence of other HRS chapters through which the Commission is granted additional statutory authorities to oversee and regulate utilities, including but not limited to, HRS Chapter 269E (One Call Center).

It is important to recognize that this measure does not give an electric cooperative or the Commission unfettered discretion to grant a waiver or exemption. Any waiver or exemption would be done through a formal proceeding before the Commission, which includes the Consumer Advocate as a party, and may, at the discretion of the Commission include other qualified intervenors or participants. Under the subject measure, the Commission is only authorized to grant a waiver or exemption if it finds that the regulatory requirements sought to be waived or exempted should not be applied to an electric cooperative or are otherwise unjust, unreasonable, or not in the public interest.

Due to the above concerns, KIUC's preference is to proceed with the language set forth in SB 1045, SD 1.

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

KONOHIKI HYDRO POWER

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013
THURSDAY MARCH 19, 2013

TESTIMONY OF Mr. P.A. LUCKETT, MANAGER, KONOHIKI HYDRO POWER, TO THE
HONORABLE SENATOR BAKER, CHAIR AND MEMBERS OF THE COMMITTEE

HOUSE BILL NO.815 – RELATING TO ELECTRIC COOPERATIVES

DESCRIPTION

H.B. No. 815 directs 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 (“Electrical Cooperatives”) when dealing with relevant matters. Further, the Commission is authorized to waive or exempt Electrical 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

As an independent power producer (“IPP”) based on Kaua’i, Konohiki Hydro Power (“KHP”) opposes this measure and would like to offer the following comments for the Committee’s consideration to drop the proposed legislation.

COMMENTS

As the largest Electrical Cooperative in the State of Hawaii and a beneficiary of exclusive franchise rights provided by the Commission, the Kauai Island Utility Cooperative operates as a monopoly on the island of Kauai. It is incumbent on the state, through the PUC, to ensure that those monopoly powers don’t thwart the Hawaii State mandates toward energy and agricultural sustainability.

The bill is written too broadly and allows too much latitude, whereby the Commission could potentially remove many of the consumer protections enjoyed by the members of the cooperative. The current protections assumed under the governing system of Electrical Cooperatives are not and have not proven to provide adequate safeguards against such abuse.

- KIUC has from its outset (and its predecessor Kauai Electric) been regulated by the Hawaii Public Utilities Commission (“PUC”), which has provided the rate payers of Kauai independent State oversight which enables a means of redress to

KONOHIKI HYDRO POWER

the PUC, if needed, to pursue any complaints about KIUC's service to the people of Kauai.

- The membership of the cooperative should have direct input as to whether the Electrical Cooperative should be removed from PUC oversight.
- Without Commission oversight, KIUC, which is promoting its own generation business while holding the franchise to the entire island of Kauai, is in danger of a conflict of interest, and could choose not to negotiate a power purchase agreement with that IPP.
- The bill is written in such a way that this protection could be waived, leaving a legitimate IPP with no recourse to assert their rights against the monopoly position of the utility.
- Mandatory oversight by the Commission and Consumer Advocate in these matters is needed in order to protect the rights of land owners and agricultural cooperatives who operate existing or planned hydro electric and other power generation systems on irrigation systems and lands they own or manage. It is also needed to help further the goals of renewable energy and sustainable agriculture development on Kauai.

SUMMARY

The Electrical Cooperative enjoys franchise rights afforded to it by the State Legislature. Independent power producers must have recourse through the Commission as the only means available to mediate disputes and to address abuses of monopoly power. The protections afforded by an Electrical Cooperative's governing structure have not and cannot provide the same recourse to third parties. Therefore, we strongly oppose this bill.

PROPOSED AMENDMENT TO H.B. NO. 815, H.D. 2

**[Proposed further amendment; proposed deletions shown in [],
and proposed additions shown in double underlined/italicized text]**

SECTION 3. Section 269-31, Hawaii Revised Statutes is amended to read as follows:

“**§269-31 Application of this chapter.** (a) This chapter shall not apply to commerce with foreign nations, or commerce with the several states of the United States, except insofar as the same may be permitted under the Constitution and laws of the United States; nor shall it apply to public utilities owned and operate by the State, or any county or other political subdivision.

(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 any applicable [franchise, charter,] decision, order, or rule 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, provided that no such waiver or exemption shall restrict the right of any customer or ratepayer of an electric cooperative to file a complaint with the public utilities commission that the electric cooperative is not adequately serving the interests of its members or ratepayers

HB815

Submitted on: 3/18/2013

Testimony for CPN on Mar 19, 2013 09:15AM in Conference Room 229

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

March 18, 2013

Senate Committee on Commerce and Consumer Protection

Honorable Senator Rosalyn Baker, Chair and Members of the Committee

Subject: HB 815 HD 2, Relating to electric cooperatives

HB 815 is well-intentioned, but it is written too broadly and needs to be amended to explicitly preserve PUC oversight of KIUC's actions.

While there may be some administrative situations where the PUC does not need to oversee electric utility cooperatives the same way as for-profit utilities, HB 815, as written, can result in the diminishment of the PUC's obligation to provide adequate protections to limit the power of a monopoly utility such as KIUC.

Exempting KIUC from Chapter 269 would in effect allow the utility to raise rates without PUC oversight.

HB 815 leaves open the possibility for the PUC, at its sole discretion, to decide to withhold state protection from the public, eliminating any means for customers, renewable energy providers, suppliers, etc. to seek remedies, recourse and redress against KIUC.

Without PUC oversight, KIUC, which supplies power to all of Kauai, could become a conflict of interest and choose to not negotiate power purchase agreements with potential independent power providers.

Removal of PUC oversight is a major decision; KIUC members should have a say in whether they want more or less PUC oversight before the State decides.

Oversight is necessary to keep KIUC accountable to established State renewable energy goals and mandates.

This bill impacts only one electric utility in the state – KIUC – affording the utility special treatment from the PUC.

HB 815 should be amended to protect the rights and interests of Kauai residents, businesses, current and future independent power providers and preserve their complaint right. There must be a means and third party to mediate disputes and address abuses of power by KIUC.

Thank you,

Samantha Shetzline