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**TO THE HOUSE COMMITTEE ON
ENERGY & ENVIRONMENTAL PROTECTION**

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

**THURSDAY, MARCH 13, 2014
9:00 A.M.**

**TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE CHRIS LEE, CHAIR,
AND MEMBERS OF THE COMMITTEE**

**SENATE BILL NO. 1043, SD1, PROPOSED HD1
RELATING TO ELECTRICITY PRODUCERS**

DESCRIPTION:

This measure proposes to authorize the Public Utilities Commission (Commission) and the Division of Consumer Advocacy (DCA) to examine all documents and other information and data deemed necessary for the review of power purchase agreements before the Commission and DCA, including financial records, projections, cost reports, and other material of third-party electricity producers seeking to sell power to a public utility under a power purchase agreement. Proposed HD1 seeks to establish the Legislative Utility Review Task Force to review franchises held by investor-owned electric utilities.

POSITION:

The Division of Consumer Advocacy supports the intent of this bill and offers the following comments.

COMMENTS:

Comments on Part 1:

In the 2013 legislative session, the Consumer Advocate testified in strong support of the financial disclosure requirements of S.B. 1043. The Consumer Advocate testified to the 2013 Legislature that the State of Hawaii was not seeing a decrease in Power Purchase Agreement (PPA) pricing for wind and solar projects as was being experienced on the mainland. The Consumer Advocate argued that in order to determine if the PPAs were in fact reasonably and fairly priced as claimed by Independent Power Producers (IPP), the Commission and the Consumer Advocate should be given access to the financial records of the IPPs. Since then, the IPP market changed and the financial disclosure requirements of this bill may no longer be necessary.

In February, 2013, Hawaiian Electric Co., Inc. (HECO) issued an invitation for low cost renewable energy projects on Oahu for which HECO would seek a waiver from the competitive bidding framework provided that the proposed projects met certain criteria. The criteria included levelized pricing below 17 cents per kWh, evidence of site control, "open book" access by HECO, the Commission, and the Consumer Advocate to all project financial information prior to application for a waiver, and a community outreach plan. Pursuant to this invitation, HECO filed an application for a waiver from the competitive bidding framework on June 18, 2013, for five (5) utility-scaled renewable energy projects with a combined average price at 15.9 cents per kWh. This reflected a potential decrease in PPA pricing from previously approved projects by approximately 30%. Subsequent to filing the application, two projects were voluntarily withdrawn. On February 13, 2014, the Commission issued its decision and order that approved the waiver for the remaining three projects. A second application for a waiver for additional projects is pending before the Commission.

These proposed projects submitted for waivers from the competitive bidding framework inject a new competitive environment into the IPP renewable energy market that did not exist previously. Although the Consumer Advocate still believes that requiring IPPs to disclose their respective financial information would be of great assistance in determining whether PPAs are reasonably priced, the Consumer

Advocate is less concerned that there is insufficient competition to drive PPA prices for wind and solar project downward given the proposed waiver projects. With some hesitation, the Consumer Advocate states that Part 1 of this bill may not be necessary at this time.

Comments on Part 2:

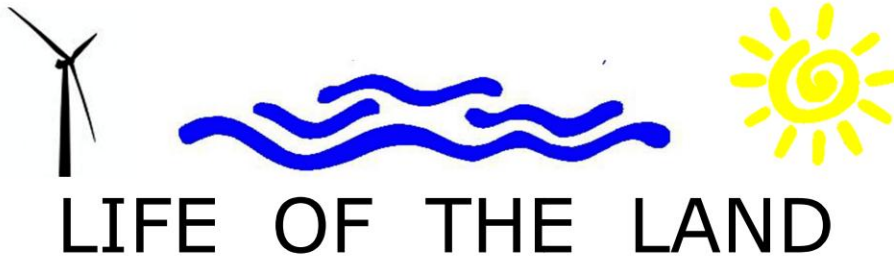
The Consumer Advocate appreciates the intent of the HD1, which is proposing to regularly evaluate investor-owned utility companies to “ensure that these utilities are adequately providing services that serve the public.” All utility companies should be held accountable for their duty to provide safe, reliable, high quality utility services at affordable rates.

Hawaii Revised Statutes (“HRS”) § 269-7 confers upon the 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 recognizes that the proposed HD1 provides that the powers of the task force shall be limited to legislative review and will not be duplicative of the powers and duties of the Commission. 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.

Finally, the Consumer Advocate questions how effective the task force will be, because the proposed HD1 does not provide for any reporting requirements, set any deadlines by which the task force is to act, or provide for funding for the task force in which to retain consultants to assist the task force in its deliberative process.

Thank you for this opportunity to testify.



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COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Chris Lee, Chair

Rep. Cynthia Thielen, Vice Chair

DATE: Thursday, March 13, 2014

TIME: 9:00 A.M.

PLACE: Conference Room 325

Re: SB 1043, SD1 Proposed HD1

SUPPORT IF AMENDED

Aloha Chair Lee, Vice Chair Thielen and Members of the Committee

Proposed Amendment: “The commission shall determine which parties and participants have access to data disclosed under this act.”

As written, SB 1043 SD1 Proposed HD1 is *VERY DANGEROUS*, extremely highly *ANTI-CONSUMER* and *ANTI-PUBLIC INTEREST*.

Over the past decade-and-a-half, Life of the Land has been a party/participant in more energy regulatory proceedings before the Public Utilities Commission than any other entity with the exception of the Consumer Advocate and the Utilities.

We have been in a dozen dockets dealing with Power Purchase Agreements.

We have signed dozens of Confidentiality Agreements.

Speaking from experience, we support greater access to confidential documents in order to make stronger arguments that we lead to stronger regulatory decisions.

There are often multiple layers of confidentiality that are currently available to the Public Utilities Commission depending in part on whether an intervenor party is a rival or an outside watchdog.

This bill expands the amount of information that third parties must submit to the PUC:

“The public utilities commission and the division of consumer advocacy of the department of commerce and consumer affairs shall have the authority to examine all documents ...including the information and data of any third party electricity producer seeking to sell electricity to a public utility”

The bill then restricts access to the data:

“The commission and the division of consumer advocacy shall maintain the confidentiality of all information submitted under confidential seal.”

Thus information which was available under confidential seal in the Aina Koa Pono proposal, or will be available in future proceedings on geothermal, interisland cable, Big Wind and Smart Meters would be held from community groups who file Motions to Intervene and who are given Party status by the Commission and who sign Confidentiality Agreements.

At the same time, the PUC testified AGAINST a bill that would require Commissioners to release their financial disclosure forms filed annually with the Ethics Commission.

This one-two punch will lead to deterioration in public trust in the regulatory process.

The proposed bill states: “The State has established aggressive clean energy goals to replace expensive imported fuels with lower cost clean energy sources that are indigenous to Hawaii.”

The HCEI Agreement said that the “fix” would raise rates in the short term. The Hawaii Revised Statutes (HRS) definition of “renewable energy” and “renewable portfolio standards” as found in HRS 269 and under the PUC’s kuleana does not mention cost or indigenous versus imported fuels.

These terms may appear in Chapter 226 which contains a long set of contradictory state goals.

The proposed bill states: “There is established the legislative utility review task force. ...Where appropriate, the task force shall seek input from the public utilities commission and the consumer advocate.”

This provision reinforces the belief that the public has no role in the process.



Directors

Jody Allione
Silver Ridge

Joe Boivin
Hawaii Gas

Kelly King
Pacific Biodiesel

Warren S. Bollmeier II
WSB-Hawaii

TESTIMONY OF WARREN BOLLMEIER ON BEHALF OF THE
HAWAII RENEWABLE ENERGY ALLIANCE BEFORE THE
HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

SB 1043 PROPOSED HD1, RELATING TO ENERGY

March 13, 2014

Chair Lee, Vice-Chair Thielen, and members of the Committee I am Warren Bollmeier, testifying on behalf of the Hawaii Renewable Energy Alliance (HREA). HREA is an industry-based, nonprofit corporation in Hawaii established in 1995. Our mission is to support, through education and advocacy, the use of renewables for a sustainable, energy-efficient, environmentally-friendly, economically- sound future for Hawaii. One of our goals is to support appropriate policy changes in state and local government, the Public Utilities Commission and the electric utilities to encourage increased use of renewables in Hawaii.

The purposes of SB 1043 Proposed HD1 are to: (i) authorize the public utilities commission and the division of consumer advocacy to examine all documents and other information and data deemed necessary for the review of power purchase agreements before the commission and division of consumer advocacy, including financial records, projections, cost reports, and other material of third-party electricity producers seeking to sell power to a public utility under a power purchase agreement, and (ii) to add Part II which establishes the Legislative Utility Review Task Force to review franchises held by investor-owned electric utilities.

HREA **opposes** Part I of this measure and **supports** Part II of this measure. We will focus our comments on Part 1:

- 1) The Role of Independent Power Producers (“IPPs”). In 1978 the Public Utility Regulatory Policy Act (“PURPA”) was established by the U. S. Congress to **encourage non-utility innovation** in alternate energy sources for electricity, including renewables and co-generation. Since then, we believe IPPs have brought **significant net benefits** to consumers in Hawaii and the mainland in developing renewable energy projects. Overall, we believe IPPs are successful because IPPs are **forced to compete** with other IPPs and they are able to take calculated risks that utilities typically can’t or won’t take, and thus are more likely to innovate and reduce costs.
- 2) This Measure Effectively Proposes to Move Towards Regulation of IPPs. We believe this measure is the first step in the direction of **regulating IPPs**. Under Hawaii Revised Statutes Chapter 269, IPPs are not regulated as public utilities, unlike electric public utilities like Hawaiian Electric Company, Inc. Giving direct statutory authority to the Commission to require IPPs to provide financial, cost and other project information as proposed in this measure would begin to enable and authorize the Commission to regulate IPPs the same way the Commission regulates public utilities, by regulating the IPPs’ costs, expenses, investments and allowed rate of return. Imposing this type of reporting requirements, financial and cost disclosures, and implied regulation on competitive IPPs would have a **chilling effect** on IPPs because of the administrative and regulatory burdens that would be placed on IPPs. This would provide a **dis-incentive for IPPs to do business in Hawaii** - further degrading Hawaii’s business climate. There would be less IPPs willing to do business and compete in the renewable energy market in Hawaii. Clearly, this

is a key policy decision for the legislature to make and we believe the negative consequences of requiring confidential and proprietary financial and cost information from private IPPs as proposed in this measure should be avoided.

- 3) Additional Impacts of the Proposed Measure. The primary additional impact of this measure would be to create **more uncertainty and risk to developers** and their financial partners. There would also be a risk that confidential proprietary information could be discovered by competitors of the IPP, which would not benefit consumers, because it would harm the competitive market in which the IPPs compete. Thus, we believe many investors will look elsewhere. **Increased uncertainty and risk, and reduced competition by private IPPs in the renewable energy market will eventually result in higher prices to consumers for renewable energy**. This measure would obviously put a damper on the further development of renewables in Hawaii.

Finally, we do not see a compelling reason why the proposed requirements need to be placed in statute.

In addition to our arguments above, we note that since our discussion on this measure last year, HECO has required certain IPPs (e.g., on the waiver projects) to provide certain confidential information during their negotiations, which we understand is also made available to the CA and the Commission for their review. This process appears to be working, and, thus, those IPPs that are willing to provide confidential data, do so voluntarily.

Therefore, we recommend that the Committee pass out this measure deleting Part I in the Proposed HD1.

Mahalo for this opportunity to testify.

SB1043

Submitted on: 3/12/2014

Testimony for EEP on Mar 13, 2014 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Robin Kaye	Individual	Comments Only	No

Comments: I support expanding the information made available to the PUC from all sources, including independent power producers. I do not support the continued --and with this legislation possibly expanded -- veil of confidentiality provided for this data. When community groups are granted intervenor status and then, even after signing protective orders and confidentiality agreements, denied access to critical information in the dockets, the entire process becomes compromised.

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**TESTIMONY BEFORE THE HOUSE COMMITTEE ON
ENERGY AND ENVIRONMENTAL PROTECTION**

S.B. No. 1043, S.D.1, Proposed H.D. 1

Relating to Electric Utilities

Thursday, March 13, 2014

9:00 am

State Capitol, Conference Room 325

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

Chair Lee 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. We are testifying in opposition to Part II of S.B. 1043, S.D.1, Proposed H.D.1.

Part II of the proposed bill establishes a legislative utility oversight task force to conduct a review of the Hawaiian Electric Companies. The issues identified are more appropriately reviewed by the Public Utilities Commission ("PUC" or "Commission").

The legislature has granted the PUC the powers to extensively review the effectiveness of investor-owned electric public utilities in fulfilling their duties to serve the public interest. (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).

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) – The Commission has ordered the utilities to publish performance metrics on its website this year.
- 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.

In addition, the issues of the future role of investor-owned electric public utilities in the State, including whether the function of these utilities should be limited to the provisions of transmission and distribution services and the applicability and nature of the regulatory compact with respect to electric utilities in Hawaii in light of industry changes and other relevant findings, are also more appropriately reviewed by the PUC.

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.

Moreover, the legislature’s review is premature. 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 grids."

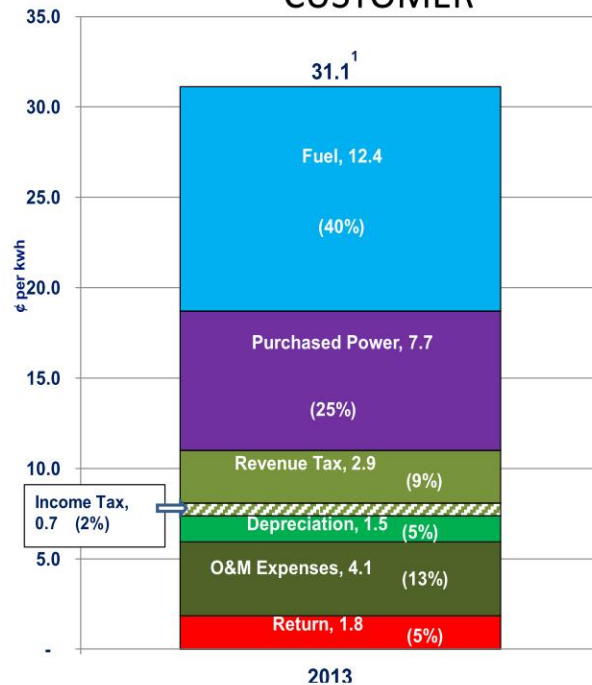
Finally, the Companies would like to offer the following comments:

(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

1

Aggressive actions like the Companies' effort to sharply reduce purchased power costs through waiver projects (e.g., 9 grid-connected renewable projects at an average cost of 15.8 cents per kilowatt-hour totaling more than 240 megawatts) and to bring liquefied natural gas ("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.

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

MARCH 13, 2014
9:00 a.m.

MEASURE: S.B. No. 1043, S.D. 1, Proposed H.D.1
TITLE: Relating to Electricity Producers

Chair Lee and Members of the Committee:

DESCRIPTION:

Part I of this measure would authorize the Public Utilities Commission (“Commission”) and the Consumer Advocate to examine all information relating to power purchase agreements (“PPA”) under review by the Commission, which includes the examination of PPA-relevant cost information of independent power producers (“IPP”). Part II of this measure would convene a legislative utility review 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 serving the public. The measure lists issues to be addressed by the Utility Task Force as a framework for the review. The measure further requires that, in the course of its review, the Utility Task Force meet publicly and seek input from the public, the Public Utilities Commission (“Commission”), and the Consumer Advocate. This measure also notes that the powers granted to the Utility Task Force are limited to legislative review and recommendation, and shall not duplicate the powers and duties of the Commission.

POSITION:

The Commission strongly supports Part I of S.B. No. 1043, S.D. 1, Proposed H.D. 1; supports the intent of Part II of the bill, but is concerned with the lack of 1) funding to acquire the expertise necessary to advise the Utility Task Force on the business of electric utilities and 2) a clear framework within which to review franchises; and would like to offer the following comments for the Committee’s consideration.

COMMENTS:

Part I of this bill addresses power purchase agreements. This measure would provide the Commission with the means to obtain full and complete information from all parties to PPAs submitted to the Commission for review and approval. Although the Commission currently has general supervisory authority over public utilities under Chapter 269, Hawaii Revised Statutes (“HRS”), which allows the Commission to compel necessary information from regulated utilities, information from non-regulated entities may not be as readily available for the Commission’s review.

To ensure the protection of a non-utility’s confidential information, included in this bill are provisions requiring the Commission to maintain the confidentiality of information submitted under confidential seal. The Commission asks the Committee to consider one amendment to Part I [page 3, line 7 to line 8] to help clarify the respective roles of the Commission and the Consumer Advocate in reviewing or approving submitted power purchase agreement information as follows:

. . . to the commission for review or approval, as the commission and
division of consumer advocacy . . .

Part II of this bill addresses regulated investor-owned electric utilities. With new technologies and changing customer expectations, the premise 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. 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, affecting the regulatory compact.¹ The Commission previously testified that in light of the changing landscape and complexity of the modern electric system, a review of the fundamental electric utility-customer relationship is warranted.²

¹Since 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.

²See Testimony of Hermina Morita, Chair, Public Utilities Commission, Department of Budget and Finance of the State of Hawaii to the House Committee on Consumer Protection & Commerce, H.B. No. 1999, H.D. 1, Relating to Electric Utilities, February 10, 2014.

However, the Commission would like to caution that a review absent proper expertise and a transparent and well-structured process could create uncertainty that negatively affects the electric utility's financial position. If the Legislature chooses to proceed, it must ensure that 1) proper resources are budgeted and allocated to obtain the required expertise on the subject matter, and 2) that the review is based on a framework that clearly establishes 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.

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

Thank you for the opportunity to testify on this measure.

SB1043

Submitted on: 3/12/2014

Testimony for EEP on Mar 13, 2014 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
sally kaye	Individual	Support	No

Comments: This is way overdue. I'm sure that many, many Hawaii ratepayers are absolutely SHOCKED to learn that pricing decisions have been made without full disclosure up to this point...

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SB1043

Submitted on: 3/11/2014

Testimony for EEP on Mar 13, 2014 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Sandie Wong	Sandra-Ann Y.H. Wong, AAL, ALC	Comments Only	No

Comments: As a attorney who represents renewable IPPs doing business in Hawaii, I have concerns in regards to Section 1 of this bill. It is important to remember that third-party electricity producers and its investors ("IPPs") are not regulated by the Hawaii PUC. Also important to remember is that unlike a public utility, IPPs do not have a franchise and/or monopoly, are not guaranteed a rate of return, and do not have the benefit of decoupling. Instead IPPs fight to survive each day in a competitive market. I am concern that the passage of Section 1 will result in IPPs and their investors being forced to look outside of Hawaii to invest in renewable energy technologies. This would put a damper on the future development of renewable energy in Hawaii and, thus, not good for the State or the ratepayers. Mahalo.

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