

SB 64

RELATING TO THE PUBLIC UTILITIES COMMISSION.

Requires the public utilities commission to publish contracts, including price information, for the purchase of renewable energy by energy utilities on a publicly-accessible portion of the commission's website, with certain exceptions.



NEIL ABERCROMBIE
GOVERNOR

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TO THE SENATE COMMITTEE
ON ENERGY AND ENVIRONMENT

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

TUESDAY, FEBRUARY 5, 2013
2:45 P.M.

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

SENATE BILL NO. 64 - RELATING TO THE PUBLIC UTILITIES COMMISSION

DESCRIPTION:

This measure proposes to require that the Public Utilities Commission ("Commission") publish power purchase contracts - for the purchase of renewable energy by energy utilities, in their entirety, including price information, on a publicly-accessible portion of the Commission's website.

POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") supports the intent of this measure, but has serious reservations over the potential consequences of this bill and offers the following comments.

COMMENTS:

The Consumer Advocate understands the consumers' desire to know the exact amount for which they are paying for each power purchase agreement (PPA) for renewable energy entered into by the electric utilities. On the other hand, the Consumer Advocate must weigh the consumers' desire to know against any potential consequences that may be detrimental to the consumers' interest in having the lowest possible PPA prices that are just and reasonable.

Currently, the Public Utilities Commission (PUC) publishes price information for wind and solar photovoltaic PPAs on the PUC's document management system (DMS). The Hawaiian Electric Companies (HECO, MECO, and HELCO) similarly provide this information for these renewable energy technologies upon filing their application for approval of the PPA. Thus, the practice of making public pricing information for wind and solar photovoltaic PPAs is already in place pursuant to a PUC order.

Where new technologies are concerned, however, the publication of price information for one PPA may set a price floor for subsequent PPAs for a project utilizing the same or similar technology. The Consumer Advocate would like to see PPAs that are priced at cost, plus a reasonable profit margin. As technologies mature or material costs decrease, this should result in costs and therefore PPA pricing to decrease. If a subsequent independent power producer (IPP) does not know the price of a previously approved PPA, then the subsequent IPP may be more likely to price its contract close to its actual cost, rather than the exact amount or slightly lower than the previously approved PPA, if pricing information for that PPA were to be made publicly available.

Therefore, the Consumer Advocate recommends that the current practice of allowing the PUC to determine whether PPA pricing information should be made publicly available should be allowed to continue without a statutory mandate.

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 ENERGY & ENVIRONMENT

FEBRUARY 5, 2013

2:45 p.m.

MEASURE: S.B. No. 64

TITLE: Relating to the Public Utilities Commission

Chair Gabbard and Members of the Committee:

DESCRIPTION:

This measure would require the Public Utilities Commission ("Commission") to make available power purchase contracts for renewable energy, including purchase price information, by publishing those contracts on the a publicly-accessible portion of the Commission's website. Contracts not yet receiving final approval or disposition by the Commission may be published with confidential material redacted, whereas contracts receiving a final decision by the Commission "shall be published in [their] entirety."

POSITION:

The Commission supports the intent of this measure to make the process of reviewing power purchase contract information, particularly cost information, more transparent. However, the Commission cannot support the measure as written and wishes to suggest an alternative approach which may be more conclusive to the type of information being sought.

COMMENTS:

All Commission records – including power purchase contracts and related information – are already publicly accessible through its Document Management System ("DMS").¹

¹To access the Commission's publicly-accessible DMS database, please visit <http://dms.puc.hawaii.gov/dms/>.

Confidential and proprietary information filed under a protective order with the Commission are redacted from the publicly available documents.

While it is an important goal of the Commission to make the regulatory process more transparent and available to all interested parties, its DMS is not very user-friendly and can be difficult to navigate for someone not familiar with Commission proceedings. It will take Commission time and resources to extrapolate information from these contracts and other reporting documents to present the price information in a meaningful way for the general public. Therefore, to help minimize the impact on the Commission's resources, the Commission suggests that its Annual Report include summary information on all power purchase agreements in effect during the fiscal period of the Annual Report. Should someone want the complete contract, it would be available on DSM. The Annual Report is available on the Commission's website and is a repository for a wide range of analytical and comparative data presented in easy to understand format.

The Commission offers the following amendment:

§269-5 Annual report and register of orders.

The public utilities commission shall prepare and present to the governor, through the director of finance, in the month of January in each year a report respecting its actions during the preceding fiscal year. This report shall include summary information and analytical, comparative, and trend data concerning major regulatory issues acted upon and pending before the commission; cases processed by the commission, including their dispositions; utility company operations, capital improvements, and rates; utility company performance in terms of efficiency and quality of services rendered; a summary of power purchase agreements in effect during the fiscal year; environmental matters having a significant impact upon

public utilities; actions of the federal government affecting the regulation of public utilities in Hawaii; long and short-range plans and objectives of the commission; together with the commission's recommendations respecting legislation and other matters requiring executive and legislative consideration. Copies of the annual reports shall be furnished by the governor to the legislature. In addition, the commission shall establish and maintain a register of all its orders and decisions, which shall be open and readily available for public inspection, and no order or decision of the commission shall take effect until it is filed and recorded in this register.

[New material underlined.]

Thank you for the opportunity to testify on this measure.



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COMMITTEE ON ENERGY AND ENVIRONMENT

Senator Mike Gabbard, Chair

Senator Russell E. Ruderman, Vice Chair

DATE: Tuesday, February 5, 2013

TIME: 2:45 p.m.

PLACE: Conference Room 225

SB 64 PUBLIC UTILITIES COMMISSION **SUPPORT**

Aloha Chair Gabbard, Vice Chair Ruderman and Members of the Committee

My name is Henry Curtis and I am the Executive Director of Life of the Land, Hawai'i's own energy, environmental and community action group advocating for the people and `aina for over four decades. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

SB 64 requires the public utilities commission to publish contracts, including price information, for the purchase of renewable energy by energy utilities on a publicly-accessible portion of the commission's website, with certain exceptions.

Electric rates are rising and people are upset. We have a right to know why rates are rising. The solution must include letting ratepayers know what they are purchasing and for what price. Prices for most

renewable energy contracts (solar, wind, geothermal) are public. It is time to put biofuels on an equal footing. Please pass this bill. Mahalo

A lack of transparency results in distrust and a deep sense of insecurity.

- Dalai Lama

A basic tenet of a healthy democracy is open dialogue and transparency.

- Peter Fenn

"The most important about thing transparency is the clarity of the public's understanding of our intentions."

-Jeffrey Lacker

The elephant in the room is the issue of transparency."

-Michael Fromkin

"Perhaps it's time to bring the process into a new decade with more transparency."

-Deborah Pryce

Goals of the Transparency In Government Program

<http://fmsi.biz/FMSI/transparency/home.html>

Goals of the Transparency in Government Program include, but are not limited to the following:

- Enhancing individuals understanding of and access to federal financial information sources.
- Providing a mechanism for individual citizens to provide oversight to Federal revenue sources and spending.
- Improving communication between the citizen and federal government officials including legislative, executive, and judicial branch organizations.
- Identifying improvements in reporting and access to financial information that are important to the public.
- Develop training programs for the public to better understand the operations of the federal government and access to information regarding its operation and management.
- Establish a feedback mechanism for the public to request information regarding the operation and management of the federal government.

"A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps, both." Pres. James Madison, August 4, 1822

"Press releases tell us when federal agencies do something right, but the Freedom of Information Act lets us know when they do not." Sen. Patrick Leahy, 1996

"When information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and - eventually - incapable of determining their own destinies." Pres. Richard Nixon, 1972

"No one has demonstrated that an ignorant society is a safe society." Lucy Dalglish, executive director, Reporters Committee for Freedom of the Press, 2002

"...a nation that is afraid to let its people judge the truth and falsehood in an open market is afraid of its people." Pres. John F. Kennedy, 1962

"When government begins closing doors, it selectively controls information rightfully belonging to the people." Judge Damon Keith, U.S. Sixth Circuit Court of Appeals

"...those who won our independence believed that public discussion is a political duty; and that this should be a fundamental principle of the American government." Justice Brandeis, *Whitney vs. California*, 1927
"The more that government becomes secret, the less it remains free."
James Russell Wiggins, newspaper editor, 1956

"We seek a free flow of information...we are not afraid to entrust the American people with unpleasant facts, foreign ideas, alien philosophies, and competitive values." John F. Kennedy, February 1962

"We must never forget that the free flow of information is essential to a democratic society." Pres. Clinton, veto of Intelligence Re-Authorization Bill, 2000

"Government ought to be all outside and no inside." Pres. Woodrow Wilson

"Democratic governance involves public debate and open decision-making; hence, the organization of interest groups, the free exchange of ideas, opinions and information is essential. Addressing the information and communication needs of the poor is also essential - the poor often lack information that is vital to their lives - information on basic rights and entitlements, information on public services, health, education, employment etc. They also lack visibility and voice to enable them to define policy priorities and access resources." United Nations Development Programme, <http://www.undp.org/oslocentre/citzpart.htm>, accessed 7 Sep. 2004.

"Official information that enhances people's capacity to exercise their rights belongs in the public domain. This information must be accessible and understandable." -- United Nations Development Programme, Access Position paper, http://www.undp.org/oslocentre/access_pos.htm, accessed 7 Sep 2004.

"I believe in open government. I've always believed in open government. I don't e-mail, however. And there's a reason: I don't want you reading my personal stuff." [...] "I don't think you're entitled to read my mail between my daughters and me." -- President George W. Bush (43) to the American Society of Newspaper Editors, 14 April 2005, repeating a claim made shortly after becoming president. [In fact, presidents' personal records are not subject to the Freedom of Information Act, and his personal e-mail would not be subject to the Presidential Records Act.] *Access Reports* 31(8) (20 April 2005):1.

"The only thing new in the world is the history you don't know." Pres. Harry Truman

"The free exchange of information between the government and the people who create that government, the people who elect that government, is absolutely crucial to the democratic process. One of our greatest freedoms is to have a right to know what our government is doing." -- Courtney Cox, a Benton,

III. attorney who won an appellate court ruling affirming that a FOIA requester is not required to explain why the information is being sought, 2005.

"A 'leak system' is ponderous, frustrating, costly and counterintuitive for a nation that values its democratic traditions. But it is absolutely essential as long as our leaders keep secrets that don't need to be kept, and as long as they can't resist putting themselves in the best light by keeping the rest of us in the dark." -- American Press Institute commentary, 2005.

"With the passage of the FOIA, the burden of proof shifted from the individual to the government. Those seeking information are no longer required to show a need for information. Instead, the 'need to know' standard has been replaced by a 'right to know' doctrine. The government now has to justify the need for secrecy." -- Introduction to the Citizens Guide on Using the Freedom of Information Act, published by the House Committee on Government Reform, September 2005

**Testimony before the
Senate Committee on Energy and Environment**

S.B. 64 -- Relating to the Public Utilities Commission

**Tuesday, February 5, 2013
2:45 pm, Conference Room 225**

**By Barry Nakamoto
Manager, Renewable Acquisition Department
Hawaiian Electric Company, Inc.**

Chair Gabbard, Vice-Chair Ruderman and Members of the Committee:

My name is Barry Nakamoto. I am the Manager of the Renewable Acquisition Department at Hawaiian Electric Company. I am testifying on behalf of Hawaiian Electric Company and its subsidiary utilities, Maui Electric Company and Hawaii Electric Light Company.

Hawaiian Electric appreciates the intent of S.B.64, but offers that this bill is unnecessary. Purchase Power Agreements, including pricing, negotiated between the Hawaiian Electric Companies and Independent Power Producers are submitted to the Hawaii Public Utilities Commission for approval and are made available for public inspection on the Commission's website. In some situations, certain information may be initially redacted in the documents filed with the Commission if that information could result in compromising ongoing or future contract negotiations with other Independent Power Producers. Such redacted information is typically lifted once the negotiations that could be affected have been completed or other concerns addressed.

Thank you for the opportunity to testify.

SB64

Submitted on: 2/3/2013

Testimony for ENE on Feb 5, 2013 14:45PM in Conference Room 225

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

Comments: So much of the PUC's work is opaque and invisible to the public, yet it is the public that must bear the results of their decisions. For too long, "competitive reasons" has been the guiding doctrine for redacting what should be public information. This bill goes a long way to open up the PUC to a transparent public agency. The tax and ratepayers of Hawaii should know the facts and financial information behind the agreements they are forced to fund.

SB64

Submitted on: 2/3/2013

Testimony for ENE on Feb 5, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Osako	Individual	Support	No

Comments: It is critical that both the PUC and public know what is in these purchase power agreements. HECO's fiduciary duty is to its stock holders although it is a public utility. HECO is guaranteed a reasonable profit which means that the more it spends, the more profit it makes. The PUC has a duty to the taxpayers and ratepayers to know exactly what is in these agreements. The whole economy and standard of living in Hawaii is dependent on the PUC knowing these figures. Please pass this law and have the power to make decisions on the real facts and figures.

SB64

Submitted on: 2/3/2013

Testimony for ENE on Feb 5, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
sherri mora	Individual	Support	No

Comments: A great deal of the PUC work is invisible to the public eye and yet the public bears the results of the decisions. The taxpayers and ratepayers of HI should know the facts and financial information behind the agreements they fund.

SB64

Submitted on: 2/3/2013

Testimony for ENE on Feb 5, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
beverly zigmond	Individual	Support	No

Comments: I support this bill as a long-overdue attempt at transparency. So much of the PUC's work is opaque and invisible to the public, yet it is the public that must bear the results of their decisions. For too long, "competition" has been the guiding doctrine for redacting what should be - what needs to be - public information. This bill goes a long way to open up the PUC to a transparent public agency. The tax and ratepayers of Hawaii should know the facts and financial information behind the agreements they are forced to fund.

SB64

Submitted on: 2/3/2013

Testimony for ENE on Feb 5, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Diane Preza	Individual	Support	No

Comments:

SB64

Submitted on: 2/3/2013

Testimony for ENE on Feb 5, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Donna Stokes	Individual	Support	No

Comments:

SB64

Submitted on: 2/3/2013

Testimony for ENE on Feb 5, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Roselani Kaho'ohalahala	Individual	Support	No

Comments:

SB64

Submitted on: 2/4/2013

Testimony for ENE on Feb 5, 2013 14:45PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Albert Morita	Individual	Support	No

Comments:

SB64 Testimony – Lance Anderson - Lāna‘i City, HI – USA

“We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.... Transparency promotes accountability and provides information for citizens about what their Government is doing.... Public engagement enhances the Government's effectiveness and improves the quality of its decisions.” – President Barack Obama

The president would support this legislation, and I am asking you to support it as well. It is the right thing to do.

Thank you for your consideration of my comments. – Lance Anderson