

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

**H.B. No. 1505, HD 1**

**Relating to Energy**

Wednesday, February 18, 2015

3:00 pm

State Capitol, Conference Room 325

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

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

My name is Kevin Katsura and I am testifying on behalf of Hawaiian Electric Company and its subsidiary utilities Maui Electric Company and Hawai'i Electric Light Company in **opposition** to H.B. 1505, H.D. 1.

This bill would prohibit the Hawaii Public Utilities Commission ("PUC") from approving any power purchase agreement ("PPA") which does not allow the sale of energy to third parties or which requires utility consent before selling energy to third parties. Consequently, certain PPAs that are negotiated at arms-length, and determined to be cost effective, reasonable and in the interests of all customers could not be approved. This would include any necessary amendments to, modifications, or renewal of PPAs critical to utility operations, unless the PPA allows for sales of energy to undefined "third parties" regardless of size, number or location.

One of the stated reasons for this bill is that allowing the unrestricted and unregulated sale of energy to third parties would reduce the curtailment of energy which sometimes occurs during excess energy conditions as a result of the need to constantly and consistently balance generation and load on the utility system. This is simply not the case. If there is too much energy on the system, and not enough load to absorb it, this amount of excess energy produced by the generation must be

curtailed. This is true regardless of who is producing the energy and who is consuming it.

Moreover, under the Companies' Power Supply Improvement Plans, filed on August 26, 2014, the amount of curtailment expected during the period from 2015-2030 is expected to be minimal as the Companies' Plans maximize the utilization of renewable energy on each of the Companies' systems. For example, during this period, it is estimated that 97.3% to 100% of the energy produced from all variable renewable resources on O'ahu would be utilized (and not curtailed) each year. This would be accomplished in part by installing energy storage to provide regulating and contingency reserves; using demand response as a tool for better managing system dispatch; selecting future thermal generation resources that have a high degree of operational flexibility; increasing the operational flexibility of existing thermal generation not slated for retirement during the study period; and reducing the "must-run" requirements of thermal generators.

To be clear, this is a retail wheeling bill. The Hawaiian Electric Companies oppose this bill because it is not beneficial to all consumers of energy in Hawaii, and is not in the public interest.

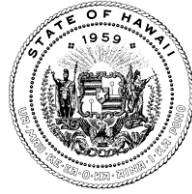
Specifically, this bill would likely benefit a few large-load customers, at the expense of non-wheeling customers who would be left paying for the costs of the current electrical infrastructure. Wheeling, as proposed, would also create winners and losers between energy providers – including those who currently have PPAs achieved through competitive bidding and the Companies' other renewable energy procurement processes such as the Feed-In Tariff program - and those who will be allowed to sell directly to third parties.

Wheeling could also make prices more inefficient, cause uneconomic bypass, reduce service reliability to core customers, and require additional costs to maintain the integrity and stability of the system.

Further, wheeling may result in the degradation of service reliability. The utility will be unable to predict where the load will come on to the system and ensure that the transmission and other infrastructure are adequate to safely support such transactions. Under this bill, the ability of the utility to negotiate operational requirements and project design to protect the system would also be degraded.

Accordingly, the Hawaiian Electric Companies oppose H.B. 1505, H.D. 1.

Thank you for this opportunity to testify.



**LATE**

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GOVERNOR

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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2015

WEDNESDAY, FEBRUARY 18, 2015  
3:00 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. 1505, H.D. 1 - RELATING TO ENERGY

**DESCRIPTION:**

This measure proposes to prohibit the Public Utilities Commission (“PUC”) from approving power purchase agreements that prohibit the sale of renewable energy to third parties or require utility consent to sell energy to third parties, to the extent that such renewable energy will be converted from electrical energy to another form of energy such as chemical or thermal energy, or to the extent that such renewable energy will be stored for later provision to an electric utility company. This measure also proposes to require fair compensation to be paid to an electric utility company when curtailed renewable energy is sold by an independent power producer to a third party on the electrical grid.

**POSITION:**

The Division of Consumer Advocacy offers comments on this bill.

COMMENTS:

The purpose of this bill is to allow independent power producers (“IPP”) to sell curtailed energy to third parties. Generally, if the electric utility is curtailing energy, then it means that supply exceeds load and the energy that is being curtailed cannot be accepted on the grid. In order for an IPP to sell that curtailed energy to a third party, it would require islanding the generator and the third party, because if either remained connected to the grid, then the curtailed energy will be put back on to the grid, which is exactly what was being prevented in the first place.

Moreover, if the IPP and the third party were not islanded, then an IPP selling energy to a third party would be wheeling, i.e., the use of the utility’s transmission and distribution system for the sale of electricity to a third party. Wheeling should be allowed only after careful consideration by the PUC with input from the various stakeholders. Furthermore, reasonable tariff rates would need to be adopted by the PUC to compensate the utility for the use of its transmission lines.

The H.D. 1 modifications to allow energy to be sold with the intent of storing it for later use or later sale back to the utility does not sufficiently address concerns with the earlier version of this bill. Energy storage should be added as a grid resource to provide the greatest benefit to all customers and not just to a single customer. If the energy storage system is a grid resource, the energy storage system that is envisioned in H.D. 1 will likely not be able to take additional energy; thus, curtailment would still likely be required.

Additionally, the Consumer Advocate contends that this measure should include a requirement for independent power producers to meet an “open book” requirement<sup>1</sup> as this would facilitate the determination that “fair compensation” will be paid to the independent power producer selling energy to the utility company. The Consumer Advocate notes that there have been decreases in the price of renewable energy across the energy industry and comparable decreases in Hawaii have not been evident. Requiring independent power producers to allow the Commission and the Division to review all relevant supporting cost documents for independent power producer projects selling energy to the utility would help to protect all utility customers and would be in the public interest.

Thank you for this opportunity to testify.

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<sup>1</sup> The use of “open book” is meant to convey the ability to review all pro forma and actual financial information of the independent power producer, similar to the regulatory review that is currently possible with regulated utility companies and their projects.



**HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

February 18, 2015, 3 P.M., Room 325  
(Testimony is 2 pages long)

**LATE**

**TESTIMONY IN SUPPORT OF HB 1505**

Aloha Chair McKelvey, Vice-Chair Woodson, and members of the Committee:

The Blue Planet Foundation supports HB 1505, which establishes a policy that will enable innovation in using and storing renewable energy. It is important to note that **this bill is intended to create a mechanism to use energy that would otherwise be wasted** (“curtailed”). This bill is not about allowing renewable energy projects to use utility power lines to sell energy to utility customers. This bill is not about reducing the utility’s ability to control the interconnection of renewable energy projects. We propose amendments to ensure that the bill does not interfere with the PUC’s ongoing review of power purchase agreements that have already been submitted for approval.

“Curtailed” energy is energy produced by an independent power producer, but which is not accepted by the utility onto the electric grid. That energy is typically wasted. Because the cost of renewable energy is often fixed, renewable energy developers must raise the price of energy sold to the electric utility to account for this risk that some generation will be wasted.

A more optimal approach would be to find ways to store that energy for later use, or convert it from electricity into another form of energy (e.g. generating hydrogen from water). Existing power purchase agreements typically restrict the use of curtailed energy. **For example, the HECO Companies’ standard power purchase agreement (“PPA”) states: “[Renewable energy projects] shall not sell energy from the Facility to any Third Party.”<sup>1</sup>** This eliminates or reduces any incentive to find innovative ways to use or store curtailed energy.

We support HB 1505 for the following reasons:

- (1) Power purchase agreements should be approved only when they are in the public interest. The public interest favors an approach that does not intentionally waste energy.
- (2) Currently, curtailment is handled through grid operations, and PUC policy generally disfavors grid operations that curtail renewable energy in favor of fossil energy. In the future, with more renewables, we may find that the electric system more frequently

<sup>1</sup> See HECO Model Power Purchase Agreement for Renewable As-Available Energy, art. 20.

generates more energy than demanded at a given point in time. We may find that renewable energy is curtailed in favor of another form of renewable energy. The future electric grid must find ways to store or convert this energy, and our energy policy should make it possible for energy markets to implement innovative solutions.

- (3) As indicated in the bill's preamble, the purpose of the bill is not to favor electricity sales directly from renewable energy project to consumers. The bill is intended to enable energy producers to find other ways to use curtailed energy. To the extent that a clarification is required on this point, we suggest the language indicated below. Subsection (c) should be deleted in its entirety, to eliminate any confusion that the bill favors sales directly to utility customers on the grid.
- (4) Lower curtailment risk can provide a win-win-win for consumers, the utility, and renewable energy projects. The utility can win because lower curtailment risk should translate into lower PPA prices. Consumers can win because less wasted energy should result in lower energy costs. Renewable developers can win because they will not be prohibited from working with entrepreneurs to find new markets for wasted energy.

We propose the following amendments:

(b) The public utilities commission shall not approve ~~(1) Any power purchase agreement; or~~  
~~(2) Any amendment, modification, or renewal of any power purchase agreement,~~  
if the power purchase agreement prohibits the sale of renewable energy to a third party or requires the consent of an electric utility company to sell renewable energy to a third party, to the extent that such renewable energy will be converted from electrical energy to another form of energy such as chemical or thermal energy, or to the extent that such renewable energy will be stored for later provision to an electric utility company. The prohibition in this subsection (b) shall only apply to power purchase agreements submitted to the public utilities commission after July 1, 2015.

~~(c) An electric utility company shall be paid fair compensation by an independent power producer when curtailed renewable energy is sold by the independent power producer to a third party on the electrical grid.~~

**In addition, consistent with the intention of the bill, Blue Planet would support amendments to ensure that ratepayers benefit from sales of curtailed energy to third parties (e.g. through lower power purchase costs).**

Thank you for the opportunity to testify.