

TESTIMONY OF RANDY IWASE
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON
ENERGY AND ENVIRONMENTAL PROTECTION

February 9, 2016
8:00 a.m.

MEASURE: H.B. No. 2081
TITLE: RELATING TO ENERGY

Chair Lee and Members of the Committee:

DESCRIPTION:

This measure creates a new part in Chapter 269, Hawaii Revised Statutes, which details and establishes a process through which State or County agencies can petition the Public Utilities Commission (“Commission”) to review and make certain determinations related to proposed “public purpose projects”.

POSITION:

The Commission offers the following comments for the Committee’s consideration.

COMMENTS:

The Commission supports the intent of establishing a new process to consider projects which are determined to be in the public interest by a public agency. The Commission notes that at this early stage the details of this process may need to be refined and the Commission is willing to work with the Legislature on appropriate language.

Thank you for the opportunity to testify on this measure.

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

H.B. No. 2081

Relating to Energy

Tuesday, February 9, 2016

8:00 am

State Capitol, Conference Room 325

Kevin M. Katsura
Assistant Deputy General Counsel (Regulatory), Legal Department
Hawaiian Electric Company, Inc.

Chair Lee, Vice Chair Lowen, 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. 2081.

This bill allows any state or county board, commission, department, or officer authorized by law to make rules or to adjudicate contested cases, to propose a "public purpose project." "Public purpose project" is defined broadly as in the public interest and the agency proposing the project makes its own determination. There is no limit to size, scope, scale, or location. This bill also proposes to minimize the required information submitted to the PUC to make a determination whether it is feasible, has definite benefits in Hawai'i, and is in the public interest and creates an unrealistic regulatory schedule that transfers additional costs and expense to the utility and its customers.

The agency proposing the project is responsible for determining for itself if its own project is in the public interest. There is no limit as to location, size, scope, or scale of a particular project. However, the utilities are asked to prepare a "feasibility report" within only 90 days of having conferred with the agency. This report is the equivalent of an Interconnection Requirements Study ("IRS") which requires much

more detail about a project than this bill requires. An effective IRS completed by the utility includes, among other things, power systems analysis and identification of equipment, costs, and schedule to evaluate the upgrades necessary to safely and reliably interconnect the proposed Project into the Hawaiian Electric system. In order to conduct the IRS, Hawaiian Electric would need, among other things, single line diagrams, equipment details, performance capabilities and associated models. The cost of the study is to be borne by our customers instead of the developer as currently done. The range of costs for an IRS is \$100,000 to \$200,000. Rule 14H already provides a process to govern the interconnection review for distribution level projects, and Rule 19 has guidelines for an IRS under a Request for Proposal.

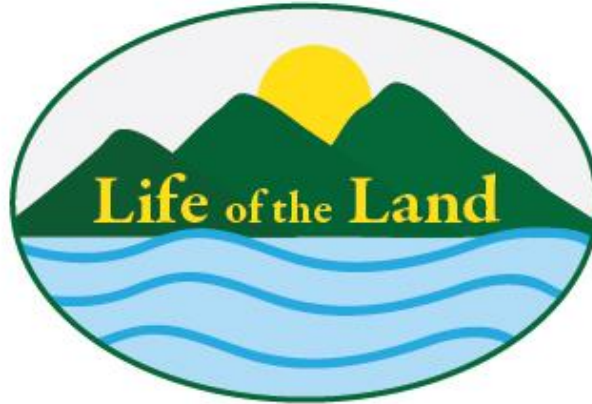
The agency is required to provide minimal information on the location, brief description, the primary energy source of the facility, the primary energy source used by the facility, capacity, public benefit; proposed rates, and feasibility of the project; the bill does not provide a vehicle for discovery or enforcement by the PUC over the petitioning agency. This bill also limits the time for the PUC and parties to fully understand the costs and benefits of a proposed project and whether the project is in the public interest.

In Power Purchase Agreement Applications we provide the PUC: performance requirements, design, construction and interconnection cost details, and a schedule of milestones to approve the contract, find the purchase energy charges to be reasonable; and find the terms and conditions of the PPA are prudent and in the public interest. These contractual terms are binding on the developer. This bill requires less information submitted yet requires a contested case and a decision within 180 days. This quick procedure with less information will likely result in less informed decisions which may have consequences over the longer term energy goals

In Hawai'i, there's no extension cord to the mainland. Unlike California and many other places we're compared to, we can't plug into the mainland grid, either for reliability or to buy or sell electricity to neighboring utilities. As has been noted publicly, the Companies' grids have limited capacity. Filling this capacity with projects that are not properly vetted and which may be more expensive than other forms of generation may not be in the best interest of the Companies' customers and may cause electricity rates to rise. We believe the current methods of procurement have been effective. To date, the companies have contracted over 800MW of projects.

Accordingly, the Hawaiian Electric Companies oppose H.B. 2076.

Thank you for this opportunity to testify.



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COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Chris Lee, Chair

Rep. Nicole E. Lowen, Vice Chair

DATE: Tuesday, February 09, 2016

TIME: 8:00 a.m.

PLACE: Conference Room 325

Re: HB 2081 Public Purpose Projects

PLEASE HOLD

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

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 45 years. 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.

This bill proposes to increase electricity rates for an uneconomical county project.

HB 2081 is designed to undercut and bypass current state and federal legal actions. It proposes that the Legislature step in the middle of a dispute between federal courts, Maui County, MECO, HECO, environmentalists, a foreign corporation and the Public Utilities Commission.

The County of Maui is contaminating the ocean.¹ Four groups concerned that the Lahaina Wastewater Reclamation Facility injection wells are polluting the ocean in violation of the Clean Water Act sued in 2012.²

U.S. District Court Judge Mollway agreed with the plaintiffs and found that four injection wells are polluting federal waters in violation of the clean water act. Rather than accepting the policy error, the county is appealing.

The County of Maui signed a deal with Anaergia to finance, construct, own and operate a resource recovery facility to process solid waste, recover recyclables, and generate renewable energy in the form of biogas.³

The deal is not economical.⁴

The County of Maui could have offered to subsidize the project. Instead the County blamed MECO. “MECO's failure to present this proposals to the Commission has and will cause harm to the County by jeopardizing the implementation of this important project.”

Anaergia proposed that MECO ratepayers subsidize the project. Maui Electric Company (MECO) said no. Anaergia filed a complaint with the Public Utilities Commission. The Commission open regulatory docket number 2015-0324 to process the complaint.⁵ The Commission bifurcated the proceeding into two parts.

“HAR § 6-61-39 authorizes the commission, upon its own initiative or motion, to consolidate or bifurcate two or more proceedings that involve related questions of fact or law if doing so would "be conducive to the proper dispatch of its business and to the ends of justice and will

¹ Judge finds Maui County breaking law with Lahaina wastewater

<http://www.hawaiinewsnow.com/story/27952147/judge-finds-maui-county-breaking-law-with-lahaina-wastewater>

² Hawai'i Wildlife Fund, Surfrider Foundation, West Maui Preservation Association, and Sierra Club-Maui Group.

<http://earthjustice.org/news/press/2015/federal-court-again-finds-maui-county-in-violation-of-clean-water-act>

³ <http://www.hawaiicleanenergyinitiative.org/mayor-inks-contract-for-waste-to-energy-deal/>

⁴ Are Anaergia's Waste-to-Energy Projects on Maui in Trouble? <http://ililanimedia.blogspot.com/2015/02/are-anaergias-waste-to-energy-projects.html>

⁵ Public Utilities Commission to examine Agriculture

<http://ililanimedia.blogspot.com/2015/12/public-utilities-commission-to-examine.html>

not unduly delay the proceedings. In the matter at hand, the primary question is "what constitutes a 'bona fide request for preferential rates for the purchase of renewable energy produced in conjunction with agricultural activities.'" The resolution of that question will determine the need to expend the commission and others' resources to properly and justly rule on the relief requested in the Complaint."

Does agricultural-based renewable energy include primarily solving a wastewater disposal crisis by producing energy? Is that a "bona fide" agriculture?

The opening briefs were filed on January 29, 2016.

The Consumer Advocate described the multiple proposals.

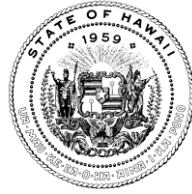
"Anaergia Companies to the Hawaiian Electric Companies for the proposals 2015-0324 made by the Anaergia Companies to Maui Electric in the Anaergia Companies' non-utility generation ("NUG") proposal II for the Anaergia Companies' project in West Maui (which was the subject of Docket No. 2013-0114) (the Anaergia Companies' "NUG II"), the proposal to supply biogas to Maui Electric as an alternative to NUG II ("Biogas Proposal II"), and the Anaergia Companies' revised proposal to supply biogas to Maui Electric as an alternative to NUG II made on July 15, 2015, ("Biogas Proposal III")."

HECO's Opening Brief states,

"Anaergia's proposed price of biogas is significantly higher than Maui Electric's currently projected price for diesel and other sources, starting at more than 33% higher than the projected price for diesel fuel in 2018, let alone other, cheaper sources of fuel. ...As an applicant for preferential rates, Anaergia has an obligation to present a proposal for "preferential rates" within the meaning of HRS § 269-27.3. The phrase "preferential rates" was intended to encompass the cost plus a reasonable return on investment for the energy producer. Thus, in order to comply with that request, the party making the request is required to submit "open-book" financing including proposed cost and profit projections as part of its request, which Anaergia did not do."

Mahalo

Henry Curtis
Executive Director



DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

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DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
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TO THE HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

TUESDAY, FEBRUARY 9, 2016
8:00 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

HOUSE BILL NO. HB 2081 - RELATING TO ENERGY

DESCRIPTION:

This measure proposes to authorize public agencies to initiate public purpose projects through which a public utility will purchase fuel or electricity, and it establishes procedures for the Public Utilities Commission ("PUC") to review these public purpose projects.

POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") opposes this bill.

COMMENTS:

The PUC is responsible for determining whether any proposed project for electricity generation is in the public interest. This determination requires the PUC to consider a broad spectrum of factors, including the capacity needs of the utility, whether the project contributes to the Renewable Portfolio Standards ("RPS"), costs and risk to the utility and the consumer, economic externalities and community interests. This bill takes some of the PUC's responsibility and places it with the public agency. Furthermore, the bill would allow a public agency to require the public utility to conduct a feasibility study at ratepayer's expense. The determination of whether a public utility is

entitled to cost recovery should lie solely with the PUC to avoid inconsistent decisions that create greater risk to the utility.

If a public agency or potential supplier of power or fuel feels that a utility is unreasonably refusing to negotiate a PPA or fuel supply contract, then the potential supplier already has recourse to approach the PUC directly and ask it to order the utility, pursuant to Hawaii Revised Statutes Chapter 269-27.2, to negotiate an agreement with the supplier and submit the agreement to the PUC for review. In the event that a rate cannot be agreed upon by the potential supplier of power and the utility, then the rate shall be as prescribed by the PUC. The affected public agency always has the ability to seek intervention in this process.

Finally, this bill states that the public utility shall bear the cost of any alteration to or modification of the grid needed to accept the energy or fuel from the public purpose project. This places the potential for costly interconnections costs on ratepayers.

Thank you for this opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 08, 2016 3:52 PM
To: EEPtestimony
Cc: dylanarm@hawaii.edu
Subject: *Submitted testimony for HB2081 on Feb 9, 2016 08:00AM*

HB2081

Submitted on: 2/8/2016

Testimony for EEP on Feb 9, 2016 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Armstrong	Individual	Support	No

Comments:

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

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House Bill 2081 – Relating to Energy
Testimony of Hermina Morita

This measure is unnecessary.

This measure authorizes public agencies to initiate public purpose projects through which a public utility will purchase fuel or electricity. This measure appears address an on-going dispute between the County of Maui and Maui Electric Company over a power purchase agreements (<http://www.mauinews.com/page/content.detail/id/602023/Anaergia-asks-PUC-to-compel-MECO-to-negotiate-contract.html?nav=10>) to lean in favor of the County despite potential economic impacts on electricity ratepayers/customers.

Under the guise of serving a public purpose (for example a solid waste or wastewater treatment facility), such a process may force a public utility to purchase fuel or electricity at an unreasonable or highly subsidized cost. Fuel and power purchase costs are passed to the electricity ratepayer/customer. This measure has the potential to open the backdoor for a State or county facility to push costs off to the electricity ratepayer/customer rather than increase user fees or taxes to fully support a public purpose project. Therefore, this bill has the potential to undermine the Public Utilities Commission and Consumer Advocate's duty to protect the electricity ratepayer/customer from unwarranted costs from public projects.