

CHAPTER 269
PUBLIC UTILITIES COMMISSION

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Note

Broadband services; exemption from certain permitting requirements. L 2011, c 151; L 2013, c 264; L 2016, c 193, §§1, 2.

Franchises prior to 1966, see RLH 1955, volume II appendix at page 1720 and 1965 Supp at page 1039.

Greenhouse gas emissions reduction task force (report to 2010 legislature and every five years thereafter). L 2007, c 234, §§1 to 7.

Honolulu Gas Company. L 1967, c 262.

Judiciary report to 2019 legislature on change in judicial proceedings made by L 2016, c 48. L 2016, c 48, §11.

Kauai Electric Company, Limited. L 1967, c 165.

Maui Electric Company, Limited. L 1991, c 12.

Maui Electric Company, Limited (for Lanai). L 1988, c 54.

Molokai Electric Company, Limited. L 1989, c 147.

Solar water heating pay as you save program pilot project. L 2006, c 240, §13.

Cross References

Natural energy laboratory of Hawaii authority as public utility; when, see §227D-1.5.

Telecommunications and cable industry information reporting, see chapter 440J.

"[PART I. PUBLIC UTILITIES, GENERALLY]"

Revision Note

Part heading added by revisor.

§269-1 Definitions. As used in this chapter:

"Agricultural activities" means a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment.

"Basic exchange service" means those services consisting of single-line dial tone, touch-tone dialing, access to operator service, access to enhanced 911, telecommunications relay service, telephone directory, and access to directory-assistance service via 411 dialing.

"Carrier of last resort" means a telecommunications carrier designated by the commission to provide universal service in a given local exchange service area determined to be lacking in effective competition.

"Designated local exchange service area" means an area as determined by the commission to be best served by designating a carrier of last resort pursuant to section 269-43.

"Dial tone" means the ability to make or receive telephone calls with or without operator intervention.

"Enforcement officer" means any person employed and authorized by the commission to investigate any matter on behalf of the commission. The term also means a motor vehicle safety officer employed and assigned, pursuant to section 271-38, by the department of transportation to enforce sections 271-8, 271-12, 271-13, 271-19, and 271-29 through assessment of civil penalties as provided in section 271-27(h), (i), and (j).

"Public highways" has the meaning defined by section 264-1, including both state and county highways, but operation upon rails shall not be deemed transportation on public highways.

"Public utility":

- (1) Includes every person who may own, control, operate, or manage as owner, lessee, trustee, receiver, or otherwise, whether under a franchise, charter, license, articles of association, or otherwise, any plant or equipment, or any part thereof, directly or indirectly for public use for the transportation of passengers or freight; for the conveyance or transmission of telecommunications messages; for the furnishing of facilities for the transmission of intelligence by electricity within the State or between points within the State by land, water, or air; for the production, conveyance, transmission, delivery, or furnishing of light, power, heat, cold, water, gas, or oil; for the storage or warehousing of goods; or for the disposal of sewage; provided that the term shall include:
 - (A) An owner or operator of a private sewer company or sewer facility; and
 - (B) A telecommunications carrier or telecommunications common carrier; and
- (2) Shall not include:
 - (A) An owner or operator of an aerial transportation enterprise;
 - (B) An owner or operator of a taxicab as defined in this section;
 - (C) Common carriers that transport only freight on the public highways, unless operating within

localities, along routes, or between points that the public utilities commission finds to be inadequately serviced without regulation under this chapter;

- (D) Persons engaged in the business of warehousing or storage unless the commission finds that regulation is necessary in the public interest;
- (E) A carrier by water to the extent that the carrier enters into private contracts for towage, salvage, hauling, or carriage between points within the State; provided that the towing, salvage, hauling, or carriage is not pursuant to either an established schedule or an undertaking to perform carriage services on behalf of the public generally;
- (F) A carrier by water, substantially engaged in interstate or foreign commerce, that transports passengers on luxury cruises between points within the State or on luxury round-trip cruises returning to the point of departure;
- (G) Any user, owner, or operator of the Hawaii electric system as defined under section 269-141;
- (H) A telecommunications provider only to the extent determined by the public utilities commission pursuant to section 269-16.9;
- (I) Any person who controls, operates, or manages plants or facilities developed pursuant to chapter 167 for conveying, distributing, and transmitting water for irrigation and other purposes for public use and purpose;
- (J) Any person who owns, controls, operates, or manages plants or facilities for the reclamation of wastewater; provided that:
 - (i) The services of the facility are provided pursuant to a service contract between the person and a state or county agency and at least ten per cent of the wastewater processed is used directly by the state or county agency that entered into the service contract;
 - (ii) The primary function of the facility is the processing of secondary treated wastewater that has been produced by a municipal wastewater treatment facility owned by a state or county agency;
 - (iii) The facility does not make sales of water to residential customers;

- (iv) The facility may distribute and sell recycled or reclaimed water to entities not covered by a state or county service contract; provided that, in the absence of regulatory oversight and direct competition, the distribution and sale of recycled or reclaimed water shall be voluntary and its pricing fair and reasonable. For purposes of this subparagraph, "recycled water" and "reclaimed water" means treated wastewater that by design is intended or used for a beneficial purpose; and
- (v) The facility is not engaged, either directly or indirectly, in the processing of food wastes;
- (K) Any person who owns, controls, operates, or manages any seawater air conditioning district cooling project; provided that at least fifty per cent of the energy required for the seawater air conditioning district cooling system is provided by a renewable energy resource, such as cold, deep seawater;
- (L) Any person who owns, controls, operates, or manages plants or facilities primarily used to charge or discharge a vehicle battery that provides power for vehicle propulsion;
- (M) Any person who:
 - (i) Owns, controls, operates, or manages a renewable energy system that is located on a customer's property; and
 - (ii) Provides, sells, or transmits the power generated from that renewable energy system to an electric utility or to the customer on whose property the renewable energy system is located; provided that, for purposes of this subparagraph, a customer's property shall include all contiguous property owned or leased by the customer without regard to interruptions in contiguity caused by easements, public thoroughfares, transportation rights-of-way, and utility rights-of-way; and
- (N) Any person who owns, controls, operates, or manages a renewable energy system that is located on such person's property and provides, sells, or transmits the power generated from that renewable energy system to an electric utility or to

lessees or tenants on the person's property where the renewable energy system is located; provided that:

- (i) An interconnection, as defined in section 269-141, is maintained with an electric public utility to preserve the lessees' or tenants' ability to be served by an electric utility;
- (ii) Such person does not use an electric public utility's transmission or distribution lines to provide, sell, or transmit electricity to lessees or tenants;
- (iii) At the time that the lease agreement is signed, the rate charged to the lessee or tenant for the power generated by the renewable energy system shall be no greater than the effective rate charged per kilowatt hour from the applicable electric utility schedule filed with the public utilities commission;
- (iv) The rate schedule or formula shall be established for the duration of the lease, and the lease agreement entered into by the lessee or tenant shall reflect such rate schedule or formula;
- (v) The lease agreement shall not abrogate any terms or conditions of applicable tariffs for termination of services for nonpayment of electric utility services or rules regarding health, safety, and welfare;
- (vi) The lease agreement shall disclose: (1) the rate schedule or formula for the duration of the lease agreement; (2) that, at the time that the lease agreement is signed, the rate charged to the lessee or tenant for the power generated by the renewable energy system shall be no greater than the effective rate charged per kilowatt hour from the applicable electric utility schedule filed with the public utilities commission; (3) that the lease agreement shall not abrogate any terms or conditions of applicable tariffs for termination of services for nonpayment of electric utility services or rules regarding health, safety, and welfare; and (4) whether the lease is contingent upon the purchase of electricity

from the renewable energy system; provided further that any disputes concerning the requirements of this provision shall be resolved pursuant to the provisions of the lease agreement or chapter 521, if applicable; and

- (vii) Nothing in this section shall be construed to permit wheeling.

If the application of this chapter is ordered by the commission in any case provided in paragraph (2)(C), (D), (H), and (I), the business of any public utility that presents evidence of bona fide operation on the date of the commencement of the proceedings resulting in the order shall be presumed to be necessary to the public convenience and necessity, but any certificate issued under this proviso shall nevertheless be subject to terms and conditions as the public utilities commission may prescribe, as provided in sections 269-16.9 and 269-20.

"Renewable energy system" means any identifiable facility, equipment, apparatus, or the like that converts renewable energy, as defined in section 269-91, to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent on fossil fuel for their generation.

"Single-line" means a single-party line or a one-party line.

"Taxicab" means and includes:

- (1) Any motor vehicle used in the movement of passengers on the public highways under the following circumstances, namely, the passenger hires the vehicle on call or at a fixed stand, with or without baggage for transportation, and controls the vehicle to the passenger's destination; and
- (2) Any motor vehicle having seating accommodations for eight or less passengers used in the movement of passengers on the public highways between a terminal, i.e., a fixed stand, in the city of Honolulu, and a terminal in a geographical district outside the limits of the city of Honolulu, and vice versa, without picking up passengers other than at the terminals or fixed stands; provided that passengers may be unloaded at any point between terminals; and provided further that this definition relating to motor vehicles operating between terminals shall pertain only to those motor vehicles whose operators or owners were duly licensed (under section 445-222 and any other

applicable provision of law or ordinance) and doing business between such terminals on January 1, 1957.

"Telecommunications carrier" or "telecommunications common carrier" means any person that owns, operates, manages, or controls any facility used to furnish telecommunications services for profit to the public, or to classes of users as to be effectively available to the public, engaged in the provision of services, such as voice, data, image, graphics, and video services, that make use of all or part of their transmission facilities, switches, broadcast equipment, signalling, or control devices.

"Telecommunications service" or "telecommunications" means the offering of transmission between or among points specified by a user, of information of the user's choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit of any closed transmission medium, and does not include cable service as defined in section 440G-3.

"Touch-tone dialing" means dual-tone multi-frequency, as opposed to dial-pulse signaling. [L 1913, c 89, §18; RL 1925, §2208; am L 1927, c 100, §1; am L 1933, c 169, §6 and c 202, §1; am L Sp 1933, c 32, §2; RL 1935, §7940; RL 1945, §4701; am L 1949, c 366, §1; am L Sp 1949, c 65, §1; RL 1955, §104-1; am L 1957, c 151, §1; HRS §269-1; am L 1969, c 30, §1; am L 1974, c 59, §2; am L 1977, c 102, §2; am L 1980, c 77, §2; am L 1981, c 167, §1; am L 1984, c 95, §4; am L 1990, c 49, §3; am L 1991, c 57, §1; am L 1994, c 264, §2; am L 1995, c 105, §§2, 7 and c 225, §3; am L 1996, c 102, §1 and c 205, §3; am L 1997, c 120, §6; am L 1998, c 11, §16; am L 1999, c 255, §1; am L 2001, c 272, §7; am L 2005, c 22, §9 and c 164, §2; am L 2008, c 169, §3; am L 2009, c 156, §5; am L 2011, c 9, §2; am L 2012, c 74, §1 and c 166, §3; am L 2013, c 261, §2]

Note

Section 445-222 referred to in definition of "taxicab" is repealed.

Cross References

Disposition of public lands, see §171-95.

Franchise tax, see chapter 240.

Public service company tax, see chapter 239.

Attorney General Opinions

Channels for transmission of audio and video signals provided by telephone company are subject to PUC jurisdiction. Att. Gen. Op. 65-12.

Producers supplying electrical energy to electric utilities for general public consumption are subject to PUC regulation. Att. Gen. Op. 65-23.

Public utilities commission may regulate community antenna television systems as public utilities. Att. Gen. Op. 69-29.

Statute which would include newspapers within definition of public utility and subject them to PUC jurisdiction would be violative of freedom of the press. Att. Gen. Op. 74-11.

"Rate" includes "rate schedule". Att. Gen. Op. 76-1.

Case Notes

Meaning of "taxicab" under former law. 41 H. 398.

Ownership of property "indirectly for public use," discussed. 56 H. 115, 530 P.2d 742.

Termination of service to public effect on status as public utility. 56 H. 115, 530 P.2d 742.

Entity was not a public utility. 67 H. 342, 686 P.2d 831.

Cited: 100 F. Supp. 164; 24 H. 136, 141; 32 H. 51, 55; 32 H. 127, 130; 34 H. 269, 270, aff'd 105 F.2d 286; 40 H. 579, 581; 41 H. 615, 616; 43 H. 216; 44 H. 634, 638, 361 P.2d 390.

" **§269-2 Public utilities commission; number, appointment of commissioners, qualifications; compensation; persons having interest in public utilities; authority.** (a) There shall be a public utilities commission of three members, to be called commissioners, and who shall be appointed in the manner prescribed in section 26-34, except as otherwise provided in this section. All members shall be appointed for terms of six years each, except that the terms of the members first appointed shall be for two, four, and six years, respectively, as designated by the governor at the time of appointment. The governor shall designate a member to be chairperson of the commission. Each member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall not apply insofar as it relates to the number of terms and consecutive number of years a member can serve on the commission; provided that no member shall serve more than twelve consecutive years.

In appointing commissioners, the governor shall select persons who have had experience in accounting, business, engineering, government, finance, law, or other similar fields. The commissioners shall devote full time to their duties as

members of the commission and no commissioner shall hold any other public office or other employment during the commissioner's term of office. No person owning any stock or bonds of any public utility corporation, or having any interest in, or deriving any remuneration from, any public utility shall be appointed a commissioner.

(b) Effective July 1, 2005, the chairperson of the commission shall be paid a salary set at eighty-seven per cent of the salary of the director of human resources development, and each of the other commissioners shall be paid a salary equal to ninety-five per cent of the chairperson's salary. The commissioners shall be exempt from chapters 76 and 89 but shall be members of the state [employees'] retirement system and shall be eligible to receive the benefits of any state or federal employee benefit program generally applicable to officers and employees of the State, including those under chapter 87A.

(c) The commission is placed, for administrative purposes only, within the department of commerce and consumer affairs. The department of commerce and consumer affairs shall not direct or exert authority over the day-to-day operations or functions of the commission, except as provided in subsection (g) and section 269-3.

(d) Notwithstanding section 26-35(a)(1) to the contrary, the commission may communicate directly with the governor or the legislature as determined by the chairperson; provided that the department of commerce and consumer affairs may represent the commission in communications with the governor or the legislature upon request by the chairperson of the commission and agreement by the department of commerce and consumer affairs.

(e) Notwithstanding section 26-35(a)(5) to the contrary, the commission's operational expenditures, such as the purchase of supplies, equipment, furniture, dues and subscriptions, travel, consultant services, and staff training, shall be determined by the chairperson and may be delegated to the executive officer appointed and employed pursuant to section 269-3; provided that such expenditures shall be subject to all applicable procurement laws and procedures.

(f) Notwithstanding section 26-35(a)(6) to the contrary, the utilization, allocation, renovation, or other use of space or spaces to be occupied by the commission shall be determined by the chairperson and may be delegated to the executive officer appointed and employed pursuant to section 269-3.

(g) Determinations made under subsection (d), (e), or (f) by the chairperson or the executive officer as delegated by the chairperson, may be reviewed by the director of commerce and consumer affairs for completeness and for compliance and

conformance with applicable administrative processes and procedures of the department of commerce and consumer affairs. [L 1913, c 89, §1; am L 1915, c 170, §1; am L 1917, c 165, §1; am L 1919, c 88, §1; am L 1921, c 127, §1; RL 1925, §2189; am L 1933, c 141, §1; RL 1935, §7941; RL 1945, §4702; am L 1951, c 213, §1; RL 1955, §104-2; am L Sp 1959 2d, c 1, §5; am imp L 1967, c 80, §1; HRS §269-2; am L 1972, c 118, §1; am L 1976, c 165, §1; am L 1982, c 129, §8; gen ch 1985; am L 1986, c 128, §7; am L 1989, c 329, §5; am L 1990, c 140, §5; am L 2002, c 148, §24; am L 2005, c 22, §10 and c 226, §7; am L 2014, c 108, §4]

Cross References

Administration, see §26-8.

Commissions, generally, see §26-34.

Attorney General Opinions

The word "qualified" in this section does not purport to prevent the governor from exercising the interim appointments authority in article V, §6 of the state constitution; thus, there is no conflict between this section and article V, §6. Therefore, this section is constitutional. Att. Gen. Op. 16-3.

Case Notes

Cited: 32 H. 127, 129.

" **§269-3 Employment of assistants.** (a) The chairperson of the public utilities commission may appoint and employ professional staff and other assistants for the public utilities commission as the chairperson finds necessary for the performance of the commission's functions and define their powers and duties. Notwithstanding section 26-35(a)(4) to the contrary and subject to applicable personnel laws, the employment, appointment, applicable salary schedules, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the commission shall be determined by the chairperson and may be delegated to the executive officer appointed and employed pursuant to subsection (b); provided that determinations concerning personnel matters made by the chairperson or the executive officer, as delegated by the chairperson, may be reviewed by the director of commerce and consumer affairs for completeness and for compliance and conformance with applicable administrative processes and procedures of the department of

commerce and consumer affairs. The chairperson may appoint and, at pleasure, dismiss a chief administrator and attorneys as may be necessary, and who shall be exempt from chapter 76. The chairperson may also appoint other staff, including a fiscal officer and a personnel officer, with or without regard to chapter 76.

(b) The chairperson of the commission shall appoint, employ, and dismiss, at pleasure, an executive officer who shall be responsible for managing the operations of the commission. The responsibilities of the executive officer shall include management and recruitment of personnel, budget planning and implementation, strategic planning and implementation, procurement and contract administration, and implementation of administrative programs and projects. The executive officer shall be exempt from chapter 76.

(c) Notwithstanding section 91-13, the commission may consult with its assistants appointed under authority of this section in any contested case or agency hearing concerning any issue of facts. Neither the commission nor any of its assistants shall in such proceeding consult with any other person or party except upon notice and an opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. [L 1913, c 89, §2; RL 1925, §2190; am L 1933, c 141, §2; RL 1945, §4703; am L 1949, c 179, §1; RL 1955, §104-3; am imp L 1963, c 21, §1 and c 114, §3; HRS §269-3; am L 1972, c 118, §2; am L 1976, c 165, §2; am L 1983, c 219, §4; am L 1985, c 292, §1; gen ch 1985; am L 1989, c 178, §1; am L 1991, c 57, §4; gen ch 1993; am L Sp 1993, c 8, §53; am L 2000, c 253, §150; am L 2006, c 143, §1; am L 2007, c 177, §3; am L 2013, c 104, §2; am L 2014, c 108, §5]

Note

Restructuring of operations, etc. L 2007, c 177, §4; L 2013, c 104, §4.

" **§269-4 REPEALED.** L 1976, c 165, §3.

" **§269-5 Annual report and register of orders.** The public utilities commission shall prepare and present to the governor 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; financing orders issued, adjustments made to the public benefits fee, and repayments or credits provided to electric utility customers pursuant to part X or chapter 196, part IV; a summary of power purchase agreements, including pricing, 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. [L 1913, c 89, §3; RL 1925, §2191; RL 1935, §7943; RL 1945, §4704; RL 1955, §104-4; am L Sp 1959 2d, c 1, §6; am L 1963, c 114, §3; HRS §269-5; am L 1976, c 165, §4; am L 2013, c 211, §4 and c 260, §2; am L 2014, c 108, §6]

" **§269-6 General powers and duties.** (a) The public utilities commission shall have the general supervision hereinafter set forth over all public utilities, and shall perform the duties and exercise the powers imposed or conferred upon it by this chapter. Included among the general powers of the commission is the authority to adopt rules pursuant to chapter 91 necessary for the purposes of this chapter.

(b) The public utilities commission shall consider the need to reduce the State's reliance on fossil fuels through energy efficiency and increased renewable energy generation in exercising its authority and duties under this chapter. In making determinations of the reasonableness of the costs of utility system capital improvements and operations, the commission shall explicitly consider, quantitatively or qualitatively, the effect of the State's reliance on fossil fuels on price volatility, export of funds for fuel imports, fuel supply reliability risk, and greenhouse gas emissions. The commission may determine that short-term costs or direct costs that are higher than alternatives relying more heavily on fossil fuels are reasonable, considering the impacts resulting from the use of fossil fuels.

(c) In exercising its authority and duties under this chapter, the public utilities commission shall consider the costs and benefits of a diverse fossil fuel portfolio and of

maximizing the efficiency of all electric utility assets to lower and stabilize the cost of electricity. Nothing in this section shall subvert the obligation of electric utilities to meet the renewable portfolio standards set forth in section 269-92.

(d) The public utilities commission, in carrying out its responsibilities under this chapter, shall consider whether the implementation of one or more of the following economic incentives or cost recovery mechanisms would be in the public interest:

- (1) The establishment of a shared cost savings incentive mechanism designed to induce a public utility to reduce energy costs and operating costs and accelerate the implementation of energy cost reduction practices;
- (2) The establishment of a renewable energy curtailment mitigation incentive mechanism to encourage public utilities to implement curtailment mitigation practices when lower cost renewable energy is available but not utilized through the sharing of energy cost savings between the public utility, ratepayer, and affected renewable energy projects;
- (3) The establishment of a stranded cost recovery mechanism to encourage the accelerated retirement of an electric utility fossil fuel electric generation plant by allowing an electric utility to recover the stranded costs created by early retirement of a fossil generation plant; and
- (4) The establishment of differentiated authorized rates of return on common equity to encourage increased utility investments in transmission and distribution infrastructure, discourage an electric utility investment in fossil fuel electric generation plants to incentivize grid modernization, and disincentivize fossil generation, respectively.

(e) The chairperson of the commission may appoint a hearings officer, who shall not be subject to chapter 76, to hear and recommend decisions in any proceeding before it other than a proceeding involving the rates or any other matters covered in the tariffs filed by the public utilities. The hearings officer shall have the power to take testimony, make findings of fact and conclusions of law, and recommend a decision; provided that the findings of fact, the conclusions of law, and the recommended decision shall be reviewed and may be approved by the commission after notice to the parties and an opportunity to be heard. The hearings officer shall have all of the above powers conferred upon the public utilities commission under section 269-10. [L 1913, c 89, §4; RL 1925, §2192; RL

1935, §7944; RL 1945, §4705; am L 1949, c 253, §1; RL 1955, §104-5; HRS §269-6; am L 1976, c 165, §5; am L 1983, c 219, §3; gen ch 1993; am L 2000, c 253, §150; am L 2007, c 177, §2; am L 2011, c 109, §1; am L 2012, c 99, §2; am L 2013, c 37, §2]

Revision Note

Subsection (b), enacted as a new section, is codified to this section pursuant to §23G-15.

Subsection designations added by revisor pursuant to §23G-15.

Attorney General Opinions

PUC has authority to approve automatic fuel adjustment clauses. Att. Gen. Op. 76-1.

Case Notes

Constitutional. 33 H. 390, aff'd 96 F.2d 412, aff'd 305 U.S. 306.

The public utilities commission has the authority to regulate the height of utility poles. 72 H. 285, 814 P.2d 398.

The billing disputes would fall within the broad provisions of this section and §269-7, as a dispute between telecommunication carriers regarding billing and compensation for services, but this would not deprive the court of jurisdiction over the matters. The language of the statutes indicates only that the public utilities commission (PUC) would have jurisdiction over matters such as transactions between carriers, and not that the PUC would have exclusive jurisdiction. 131 H. 257, 318 P.3d 97 (2013).

The statutes and rules cited by defendants did not require dismissal of the billing disputes on the basis of primary jurisdiction. Sections 269-16 and 269-37 and this section did not place the action in the instant case within the "special competence" of the public utilities commission (PUC); the statutes provided the PUC with authority to take certain actions as an administrative agency, but the authority granted to the PUC over certain types of billing disputes is shared with the courts. 131 H. 257, 318 P.3d 97 (2013).

Cited: 665 F. Supp. 2d 1189 (2009).

Cited: 24 H. 136, 139; 32 H. 127, 129.

" **[§269-6.5] Electronic copies of documents.** (a) No later than July 1, 2011, the public utilities commission shall accept from any person who submits a document to the commission the original and one electronic copy of each application, complaint,

pleading, brief, or other document required to be filed with the commission pursuant to this chapter and the consumer advocate shall accept service of one paper copy and one electronic copy of each application, complaint, pleading, brief, or other document filed with the commission.

(b) The commission shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section. Until the final adoption by the commission of rules governing the electronic filing of documents with the commission, the following requirements shall apply to all documents submitted to the commission pursuant to this section; provided that additional requirements with regard to document format may be established by the commission through written guidelines:

- (1) Unless otherwise required by this chapter or the rules or guidelines of the commission, each person who submits or files an application, complaint, pleading, brief, or other document shall submit to or file with the commission an original and one electronic copy of each document and shall serve one paper copy and one electronic copy of each document on the consumer advocate;
- (2) All paper documents submitted to or filed with the commission shall be printed on one side of the page only and, if practicable, in portrait orientation;
- (3) Original paper documents submitted to or filed with the commission shall not be stapled but shall be clipped together or placed in a clearly marked three-ring binder, as appropriate;
- (4) All paper documents filed or submitted to the commission shall include appropriately labeled separator pages in addition to tabbed dividers, as applicable;
- (5) All confidential documents filed under confidential seal shall be clearly designated in accordance with the requirements of any applicable protective order, and the sealed envelope in which the confidential documents are enclosed shall clearly indicate the appropriate docket number and subject;
- (6) Electronic documents shall be submitted on a clearly marked compact disk and shall be in portable document format saved in separate files corresponding to the original paper document submission; provided that electronic documents submitted under confidential seal shall be submitted on a separate compact disk, clearly marked as confidential and indicating the appropriate docket number and subject; and

- (7) Electronic documents shall be named using the filing party's name, docket number, date of filing, and name of document as part of the document title.

Upon final adoption of rules pursuant to chapter 91, the rules of the commission governing submission or filing of electronic documents shall supersede the provisions of this subsection.

(c) No later than July 1, 2013, the public utilities commission shall accept any application, complaint, pleading, brief, or other document required to be filed with the commission pursuant to this chapter as either a paper document or an electronic document.

(d) If a signature is required on any document submitted electronically pursuant to this section, that requirement shall be satisfied by the inclusion of an electronic signature. Chapter 489E shall apply to all electronic documents submitted pursuant to this section. [L 2011, c 69, §1]

" **§269-7 Investigative powers.** (a) The public utilities commission and each commissioner shall have power to examine into the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

(b) The commission may investigate any person acting in the capacity of or engaging in the business of a public utility within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter or the rules promulgated under this chapter.

(c) Any investigation may be made by the commission on its own motion, and shall be made when requested by the public utility to be investigated, or by any person upon a sworn written complaint to the commission, setting forth any prima facie cause of complaint. A majority of the commission shall constitute a quorum. [L 1913, c 89, §5; RL 1925, §2193; RL 1935,

§7945; RL 1945, §4706; RL 1955, §104-6; HRS §269-7; am L 1991, c 57, §5]

Case Notes

Shipping from port to port in Territory is interstate commerce. Commission has no jurisdiction to regulate rates and charges of common carrier by water in interstate commerce for transportation of persons and property from port to port. 24 H. 136.

Not repealed by Shipping Board Act (Sept. 7, 1916, 39 Stat. 451). 32 H. 127.

To establish rate basis, fix fair rate. 33 H. 487.

Interisland shipping. 33 H. 890, aff'd 96 F.2d 412, aff'd 305 U.S. 306.

Duty to require compliance with federal law. 47 H. 1, 384 P.2d 536.

PUC may dismiss complaint without a hearing or investigation. 64 H. 289, 639 P.2d 1103.

The billing disputes would fall within the broad provisions of §269-6 and this section, as a dispute between telecommunication carriers regarding billing and compensation for services, but this would not deprive the court of jurisdiction over the matters. The language of the statutes indicates only that the public utilities commission (PUC) would have jurisdiction over matters such as transactions between carriers, and not that the PUC would have exclusive jurisdiction. 131 H. 257, 318 P.3d 97 (2013).

Cited: 665 F. Supp. 2d 1189 (2009).

" **§269-7.5 Certificates of public convenience and necessity.**

(a) No public utility, as defined in section 269-1, shall commence its business without first having obtained from the commission a certificate of public convenience and necessity. Applications for certificates shall be made in writing to the commission and shall comply with the requirements prescribed in the commission's rules. The application shall include the type of service to be performed, the geographical scope of the operation, the type of equipment to be employed in the service, the name of competing utilities for the proposed service, a statement of its financial ability to render the proposed service, a current financial statement of the applicant, and the rates or charges proposed to be charged including the rules governing the proposed service.

(b) If the applicant for a certificate of public convenience and necessity has any known consumers or patrons at the time of the filing of the application, the applicant shall

notify these consumers or patrons of the rates and charges proposed to be established by the application; provided that:

(1) The notice shall be mailed to the last known address of the consumer or patron on file with the applicant or the applicant's affiliates; and

(2) The manner and the fact of the notification shall be reported to the commission,

within seven days from the filing of the application.

(c) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied. Any certificate issued shall specify the service to be rendered and there shall be attached to the exercise of the privileges granted by the certificate at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as a public convenience and necessity may require. The reasonableness of the rates, charges, and tariff rules proposed by the applicant shall be determined by the commission during the same proceeding examining the present and future conveniences and needs of the public and qualifications of the applicant, in accordance with the standards set forth in section 269-16.

(d) No public utility that holds a franchise or charter enacted or granted by the legislative or executive authority of the State or its predecessor governments, or that has a bona fide operation as a public utility heretofore recognized by the commission, shall be required to obtain a certificate of public convenience and necessity under this section.

(e) Any certificate, upon application of the holder and at the discretion of the public utilities commission, may be amended, suspended, or revoked, in whole or in part. The commission after notice and hearing may suspend, amend, or revoke any certificate in part or in whole, if the holder is found to be in wilful violation of any of the provisions of this chapter or with any lawful order or rule of the commission adopted thereunder, or with any term, condition, or limitation of the certificate. [L 1978, c 72, §1; am L 1986, c 127, §1; am L 2006, c 9, §1]

Case Notes

Rebuttable presumption that a contribution was made by lot owners, or lessees, for construction of a utility system inapplicable based on lack of salient characteristics showing intent by developer to obtain double recovery for its capital construction costs and regulatory scheme of this section. 83 H. 132, 925 P.2d 302.

" **§269-8 Public utilities to furnish information.** Every public utility or other person subject to investigation by the commission, shall at all times, upon request, furnish to the public utilities commission all information that it may require respecting any of the matters concerning which it is given power to investigate, and shall permit the examination of its books, records, contracts, maps, and other documents by the commission, or any of its members, or any person authorized by it in writing to make such examination, and shall furnish the commission with a complete inventory of its property in such form as the commission may direct. [L 1913, c 89, §6; RL 1925, §2194; RL 1935, §7946; RL 1945, §4707; RL 1955, §104-7; HRS §269-8; am L 1991, c 57, §6]

" **[§269-8.2] Location of records.** A public utility shall keep and maintain within the State such records, books, papers, accounts, and other documents as the public utilities commission may determine are necessary to its effective regulation. [L 1977, c 165, §1]

" **[§269-8.5] Annual financial reports.** All annual financial reports required to be filed with the commission by public utilities shall include a certification that such report conforms with the applicable uniform system of accounts adopted by the commission. [L 1977, c 15, §1]

" **§269-9 Report accidents.** Every public utility shall report to the public utilities commission all accidents caused by or occurring in connection with its operations and service, and the commission shall investigate the causes of any accident which results in loss of life, and may investigate any other accidents which in its opinion require investigation. [L 1913, c 89, §7; RL 1925, §2195; RL 1935, §7947; RL 1945, §4708; RL 1955, §104-8; HRS §269-9]

" **§269-10 Commission may compel attendance of witnesses, etc.** In all investigations made by the public utilities commission, and in all proceedings before it, the commission and each commissioner shall have the same powers respecting administering oaths, compelling the attendance of witnesses and

the production of documentary evidence, examining witnesses, and punishing for contempt, as are possessed by circuit courts. In case of disobedience by any person to any order of the commission or of any commissioner, or any subpoena issued by it or the commissioner, or of the refusal of any witness to testify to any matter regarding which the witness may be questioned lawfully, any circuit court, on application by the commission or a commissioner, shall compel obedience as in case of disobedience of the requirements of a subpoena issued from a circuit court or a refusal to testify therein. No person shall be excused from testifying or from producing any book, waybill, document, paper, or account in any investigation or inquiry by a hearing before the commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, waybill, document, paper, or account required of the person may tend to incriminate the person or subject the person to penalty or forfeiture; but no person shall be prosecuted for any crime, punished for any crime, or subjected to any criminal penalty or criminal forfeiture for or on account of any act, transaction, matter, or thing concerning which the person shall under oath have testified or produced documentary evidence. Nothing herein shall be construed as in any manner giving to any public utility or any person immunity of any kind. The fees and traveling expenses of witnesses shall be the same as allowed witnesses in the circuit courts and shall be paid by the State out of any appropriation available for the expenses of the commission. All meetings and hearings of the commission shall be public. [L 1913, c 89, §8; RL 1925, §2196; am L 1933, c 169, §1; RL 1935, §7948; RL 1945, §4709; RL 1955, §104-9; HRS §269-10; am L 1973, c 149, §1(a); gen ch 1985; am L 1991, c 57, §7]

" **§269-11 REPEALED.** L 1983, c 98, §3.

" **§269-12 Notices.** (a) Whenever an investigation is undertaken by the public utilities commission, reasonable notice in writing of such fact and of the subject or subjects to be investigated shall be given to the public utility or the person concerned, and when based upon complaints made to it as prescribed in section 269-7, a copy of the complaint, and a notice in writing of the date and place fixed by the commission for beginning the investigation, shall be served upon the public utility or the person concerned, or other respondent and the complainant not less than two weeks before the date designated for the hearing.

(b) Any notice provided pursuant to section 269-16(b), shall plainly state the rate, fare, charge, classification, schedule, rule, or practice proposed to be established,

abandoned, modified, or departed from and the proposed effective date thereof and shall be given by filing the notice with the commission and keeping it open for public inspection.

(c) Any public hearing held pursuant to section 269-16(b), shall be a noticed public hearing or hearings on the island or islands on which the utility provides utility services. Notice of the hearing, with the purpose thereof and the date, time, and place at which it will open, shall be given not less than once in each of three weeks in the county or counties in which the utility provides utility service, the first notice being not less than twenty-one days before the public hearing and the last notice being not more than two days before the scheduled hearing. The applicant or applicants shall notify their consumers or patrons of the proposed change in rates and of the time and place of the public hearing not less than one week before the date set, the manner and the fact of notification to be reported to the commission before the date of hearing. [L 1913, c 89, §10; RL 1925, §2198; RL 1935, §7950; RL 1945, §4711; RL 1955, §104-11; HRS §269-12; am L 1983, c 98, §1; am L 1991, c 57, §8; am L 1998, c 2, §81; am L 2009, c 29, §2]

" **§269-13 Right to be represented by counsel.** At any investigation by or proceeding before the public utilities commission the public utility or the person concerned, or other respondent or party and any complainant or permitted intervenor shall have the right to be present and represented by counsel, to present any evidence desired, and to cross-examine any witness who may be called. [L 1913, c 89, §11; RL 1925, §2199; RL 1935, §7951; RL 1945, §4712; RL 1955, §104-12; HRS §269-13; am L 1973, c 149, §1(b); am L 1991, c 57, §9]

Case Notes

Intervention as party is a matter within sound discretion of the commission. 56 H. 260, 535 P.2d 1102.

" **§269-14 REPEALED.** L 1983, c 219, §2.

" **[\$269-14.5] Appointment of receiver for public utilities.**
(a) Whenever the commission finds that a regulated water utility or regulated sewer utility is failing, or that there is an imminent threat of the utility failing, to provide adequate and reasonable service to its customers, and that the failure is a serious and imminent threat to health, safety, and welfare, the commission may appoint a receiver to take any temporary action necessary to assure continued service or to bring the service up to appropriate regulatory standards. The commission

may also appoint a receiver to take any temporary action necessary to assure continued service if, after notice and hearing, the commission finds that any water or sewer utility regulated under this chapter consistently fails to provide adequate and reasonable service. In carrying out its responsibilities, the receiver and any additional outside legal counsel, consultants, or staff the commission or receiver may deem necessary under the circumstances, shall have the authority to gain access to all of the utility company assets and records and to manage those assets in a manner that will restore or maintain an acceptable level of service to customers. The receiver shall be authorized to expend existing utility company revenues for labor and materials and to commit additional resources as are essential to providing an acceptable level of service. These expenditures shall be funded in accordance with generally accepted ratemaking practices. Any costs incurred by the commission, its staff, or the appointed receiver under this section shall be the responsibility of the utility in receivership or its ratepayers. Control of and responsibility for the utility shall remain with the receiver until the utility can be returned to the original owners, transferred to new owners, or liquidated as the commission determines to be in the public interest.

(b) If the commission determines that the utility's action or inaction that caused it to be placed under the control and responsibility of a receiver under this section was due to intentional misappropriation or wrongful diversion of the assets or income of the utility or to other wilful misconduct by any director, officer, or manager of the utility, it may require such director, officer, or manager to make restitution to the utility. [L 2009, c 74, §2]

" **§269-15 Commission may institute proceedings to enforce chapter.** (a) If the public utilities commission is of the opinion that any public utility or any person is violating or neglecting to comply with any provision of this chapter or of any rule, regulation, order, or other requirement of the commission, or of any provisions of its franchise, charter, or articles of association, if any, or that changes, additions, extensions, or repairs are desirable in its plant or service to meet the reasonable convenience or necessity of the public, or to insure greater safety or security, or that any rates, fares, classifications, charges, or rules are unreasonable or unreasonably discriminatory, or that in any way it is doing what it ought not to do, or not doing what it ought to do, it shall in writing inform the public utility or the person and may institute such proceedings before it as may be necessary to

require the public utility or the person to correct any such deficiency. In such event, the commission may by order direct the consumer advocate to appear in such proceeding, to carry out the purposes of this section. The commission may examine into any of the matters referred to in section 269-7, notwithstanding that the same may be within the jurisdiction of any court or other body; provided that this section shall not be construed as in any manner limiting or otherwise affecting the jurisdiction of any such court or other body.

(b) In addition to any other remedy available, the commission or its enforcement officer may issue citations to any person acting in the capacity of or engaging in the business of a public utility within the State, without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter or the rules adopted thereunder.

- (1) The citation may contain an order of abatement and an assessment of civil penalties as provided in section 269-28(c). All penalties collected under this subsection shall be deposited in the treasury of the State. Service of a citation issued under this subsection shall be made by personal service whenever possible, or by certified mail, restricted delivery, sent to the last known business or residence address of the person cited.
- (2) Any person served with a citation under this subsection may submit a written request to the commission for a hearing, within twenty days from the receipt of the citation, with respect to the violations alleged, the scope of the order of abatement and the amount of civil penalties assessed. If the person cited under this subsection timely notifies the commission of the request for a hearing, the commission shall afford an opportunity for a hearing under chapter 91. The hearing shall be conducted by the commission or the commission may designate a hearings officer to hold the hearing.
- (3) If the person cited under this subsection does not submit a written request to the commission for a hearing within twenty days from the receipt of the citation, the citation shall be deemed a final order of the commission. The commission may apply to the appropriate court for a judgment to enforce the provisions of any final order, issued by the commission or designated hearings officer pursuant to this subsection, including the provisions for abatement and civil penalties imposed. In any

proceeding to enforce the provisions of the final order of the commission or designated hearings officer, the commission need only show that the notice was given, a hearing was held or the time granted for requesting the hearing has run without such a request, and a certified copy of the final order of the commission or designated hearings officer.

- (4) If any party is aggrieved by the decision of the commission or the designated hearings officer, the party may appeal to the intermediate appellate court, subject to chapter 602, in the manner provided for civil appeals from the circuit court; provided that the operation of an abatement order shall not be stayed on appeal unless specifically ordered by a court of competent jurisdiction after applying the stay criteria enumerated in section 91-14(c). The sanctions and disposition authorized under this subsection shall be separate and in addition to all other remedies either civil or criminal provided in any other applicable statutory provision. The commission may adopt rules under chapter 91 as may be necessary to fully effectuate this subsection. [L 1913, c 89, §13; RL 1925, §2201; RL 1935, §7953; RL 1945, §4714; RL 1955, §104-14; HRS §269-15; am L 1976, c 165, §6; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 1991, c 57, §10; am L 2004, c 202, §27; am L 2006, c 94, §1; am L 2010, c 109, §1; am 2015, c 8, §1]

Case Notes

May institute proceedings before Shipping Board. 32 H. 127. Constitutional. 33 H. 890, aff'd 96 F.2d 412, aff'd 305 U.S. 306.

Commission's duty to require compliance with federal law. 47 H. 1, 384 P.2d 536.

In subsection (a), the legislature recognized concurrent jurisdiction could exist in the courts, when it stated that "this section shall not be construed as in any manner limiting or otherwise affecting the jurisdiction of any such court". 131 H. 257, 318 P.3d 97 (2013).

Cited: 24 H. 136, 138, 140.

" **§269-15.5 Appeals.** [*Repeal and reenactment on July 1, 2019. L 2016, c 48, §14.*] Except as otherwise provided in this chapter, an appeal from an order of the public utilities commission under this chapter shall lie, subject to chapter 602,

in the manner provided for civil appeals from the circuit courts. Only a person aggrieved in a contested case proceeding provided for in this chapter may appeal from the order, if the order is final, or if preliminary, is of the nature defined by section 91-14(a). The commission may elect to be a party to all matters from which an order of the commission is appealed, and the commission may file appropriate responsive briefs or pleadings in the appeal; provided that where there was no adverse party in the case below, or in cases where there is no adverse party to the appeal, the commission shall be a party to all matters in which an order of the commission is appealed and shall file the appropriate responsive briefs or pleadings in defending all such orders. The appearance of the commission as a party in appellate proceedings in no way limits the participation of persons otherwise qualified to be parties on appeal. The appeal shall not of itself stay the operation of the order appealed from, but the appellate court may stay the order after a hearing upon a motion therefor and may impose conditions it deems proper, including but not limited to requiring a bond, requiring that accounts be kept, or requiring that other measures be taken as ordered to secure restitution of the excess charges, if any, made during the pendency of the appeal, in case the order appealed from is sustained, reversed, or modified in whole or in part. [L 1998, c 195, §1; am L 2004, c 202, §28; am L 2006, c 94, §1; am L 2010, c 109, §1; am L 2016, c 48, §9]

Note

Judiciary report to 2019 legislature on change in judicial proceedings made by L 2016, c 48. L 2016, c 48, §11.

The source note to this section is supplemented by "am L 2006, c 94, §1; am L 2010, c 109, §1".

Cross References

Contested cases, see §269-15.51.

Rules of Court

Appeals, see Hawaii Rules of Appellate Procedure; stay pending appeal, see HRAP rule 8.

Case Notes

Where a hearing on a petition for a declaratory order before the public utilities commission was discretionary and not

required by law, the dismissal order was not a contested case under §91-1(5); therefore, because a direct appeal to the intermediate appellate court (ICA) under §91-14(b) and this section only applied to contested cases, appellant power company was not entitled to appeal the dismissal order directly to the ICA; thus, the ICA lacked jurisdiction over appellant's appeal. 126 H. 242 (App.), 269 P.3d 777 (2012).

" **[§269-15.51] Contested cases.** *[Section repealed July 1, 2019. L 2016, c 48, §14.]* (a) Chapter 91 shall apply to every contested case arising under this chapter except where chapter 91 conflicts with this chapter, in which case this chapter shall apply. Any other law to the contrary notwithstanding, including chapter 91, any contested case under this chapter shall be appealed from a final decision and order or a preliminary ruling that is of the nature defined by section 91-14(a) upon the record directly to the supreme court for final decision. Only a person aggrieved in a contested case proceeding provided for in this chapter may appeal from the final decision and order or preliminary ruling. For the purposes of this section, the term "person aggrieved" includes an agency that is a party to a contested case proceeding before that agency or another agency.

(b) The court shall give priority to contested case appeals of significant statewide importance over all other civil or administrative appeals or matters and shall decide these appeals as expeditiously as possible. [L 2016, c 48, §4]

Note

Judiciary report to 2019 legislature on change in judicial proceedings made by L 2016, c 48. L 2016, c 48, §11.

Cross References

Appeals, see §269-15.5.

" **[§269-15.6] Alternative dispute resolution.** The commission may require the parties in any matter before the commission to participate in nonbinding arbitration, mediation, or other alternative dispute resolution process prior to the hearing. [L 2000, c 263, §1]

" **§269-16 Regulation of utility rates; ratemaking procedures.** (a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility or by two or more public utilities jointly shall be just and reasonable and shall be filed with the public

utilities commission. The rates, fares, classifications, charges, and rules of every public utility shall be published by the public utility in such manner as the public utilities commission may require, and copies shall be furnished to any person on request.

To the extent the contested case proceedings referred to in chapter 91 are required in any rate proceeding to ensure fairness and to provide due process to parties that may be affected by rates approved by the commission, the evidentiary hearings shall be conducted expeditiously and shall be conducted as a part of the ratemaking proceeding.

(b) No rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established, abandoned, modified, or departed from by any public utility, except after thirty days' notice to the commission as prescribed in section 269-12(b), and prior approval by the commission for any increases in rates, fares, or charges. The commission, in its discretion and for good cause shown, may allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in section 269-12(b). A contested case hearing shall be held in connection with any increase in rates, and the hearing shall be preceded by a public hearing as prescribed in section 269-12(c), at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase. The commission, upon notice to the public utility, may:

- (1) Suspend the operation of all or any part of the proposed rate, fare, charge, classification, schedule, rule, or practice or any proposed abandonment or modification thereof or departure therefrom;
- (2) After a hearing, by order:
 - (A) Regulate, fix, and change all such rates, fares, charges, classifications, schedules, rules, and practices so that the same shall be just and reasonable;
 - (B) Prohibit rebates and unreasonable discrimination between localities or between users or consumers under substantially similar conditions;
 - (C) Regulate the manner in which the property of every public utility is operated with reference to the safety and accommodation of the public;
 - (D) Prescribe its form and method of keeping accounts, books, and records, and its accounting system;

- (E) Regulate the return upon its public utility property;
 - (F) Regulate the incurring of indebtedness relating to its public utility business; and
 - (G) Regulate its financial transactions; and
- (3) Do all things that are necessary and in the exercise of the commission's power and jurisdiction, all of which as so ordered, regulated, fixed, and changed are just and reasonable, and provide a fair return on the property of the utility used and useful for public utility purposes.

(c) The commission may in its discretion, after public hearing and upon showing by a public utility of probable entitlement and financial need, authorize temporary increases in rates, fares, and charges; provided that the commission shall require by order the public utility to return, in the form of an adjustment to rates, fares, or charges to be billed in the future, any amounts with interest, at a rate equal to the rate of return on the public utility's rate base found to be reasonable by the commission, received by reason of continued operation that are in excess of the rates, fares, or charges finally determined to be just and reasonable by the commission. Interest on any excess shall commence as of the date that any rate, fare, or charge goes into effect that results in the excess and shall continue to accrue on the balance of the excess until returned.

(d) The commission shall make every effort to complete its deliberations and issue its decision as expeditiously as possible and before nine months from the date the public utility filed its completed application; provided that in carrying out this mandate, the commission shall require all parties to a proceeding to comply strictly with procedural time schedules that it establishes. If a decision is rendered after the nine-month period, the commission shall report in writing the reasons therefor to the legislature within thirty days after rendering the decision.

Notwithstanding subsection (c), if the commission has not issued its final decision on a public utility's rate application within the nine-month period stated in this section, the commission, within one month after the expiration of the nine-month period, shall render an interim decision allowing the increase in rates, fares and charges, if any, to which the commission, based on the evidentiary record before it, believes the public utility is probably entitled. The commission may postpone its interim rate decision for thirty days if the commission considers the evidentiary hearings incomplete. In the event interim rates are made effective, the commission shall

require by order the public utility to return, in the form of an adjustment to rates, fares, or charges to be billed in the future, any amounts with interest, at a rate equal to the rate of return on the public utility's rate base found to be reasonable by the commission, received under the interim rates that are in excess of the rates, fares, or charges finally determined to be just and reasonable by the commission. Interest on any excess shall commence as of the date that any rate, fare, or charge goes into effect that results in the excess and shall continue to accrue on the balance of the excess until returned.

The nine-month period in this subsection shall begin only after a completed application has been filed with the commission and a copy served on the consumer advocate. The commission shall establish standards concerning the data required to be set forth in the application in order for it to be deemed a completed application. The consumer advocate may, within twenty-one days after receipt, object to the sufficiency of any application, and the commission shall hear and determine any objection within twenty-one days after it is filed. If the commission finds that the objections are without merit, the application shall be deemed to have been completed upon original filing. If the commission finds the application to be incomplete, it shall require the applicant to submit an amended application consistent with its findings, and the nine-month period shall not commence until the amended application is filed.

(e) In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the State of Hawaii, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the commission may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among the organizations, trades, or businesses, if it determines that the distribution, apportionment, or allocation is necessary to adequately reflect the income of any such organizations, trades, or businesses to carry out the regulatory duties imposed by this section.

(f) Notwithstanding any law to the contrary, for public utilities having annual gross revenues of less than \$2,000,000, the commission may make and amend its rules and procedures to provide the commission with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the utility company and its customers. In the determination of the reasonableness of the proposed rates, the commission shall:

- (1) Require the filing of a standard form application to be developed by the commission. The standard form application for general rate increases shall describe the specific facts that shall be submitted to support a determination of the reasonableness of the proposed rates, and require the submission of financial information in conformance with a standard chart of accounts to be approved by the commission, and other commission guidelines to allow expeditious review of a requested general rate increase application;
- (2) Hold a public hearing as prescribed in section 269-12(c) at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase. The public hearing shall be preceded by proper notice, as prescribed in section 269-12; and
- (3) Make every effort to complete its deliberations and issue a proposed decision and order within six months from the date the public utility files a completed application with the commission; provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene. If a proposed decision and order is rendered after the six-month period, the commission shall report in writing the reasons therefor to the legislature within thirty days after rendering the proposed decision and order. Prior to the issuance of the commission's proposed decision and order, the parties shall not be entitled to a contested case hearing.

If all parties to the proceeding accept the proposed decision and order, the parties shall not be entitled to a contested case hearing, and section 269-15.5 shall not apply. If the commission permits a person to intervene, the six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility's completed application was filed, pursuant to subsections (b), (c), and (d).

If a party does not accept the proposed decision and order, either in whole or in part, that party shall give notice of its objection or nonacceptance within the timeframe prescribed by the commission in the proposed decision and order, setting forth the basis for its objection or nonacceptance; provided that the proposed decision and order shall have no

force or effect pending the commission's final decision. If notice is filed, the above six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility's completed application was filed as set forth in subsection (d). Any party that does not accept the proposed decision and order under this paragraph shall be entitled to a contested case hearing; provided that the parties to the proceeding may waive the contested case hearing.

Public utilities subject to this subsection shall follow the standard chart of accounts to be approved by the commission for financial reporting purposes. The public utilities shall file a certified copy of the annual financial statements in addition to an updated chart of accounts used to maintain their financial records with the commission and consumer advocate within ninety days from the end of each calendar or fiscal year, as applicable, unless this timeframe is extended by the commission. The owner, officer, general partner, or authorized agent of the utility shall certify that the reports were prepared in accordance with the standard chart of accounts.

(g) Any automatic fuel rate adjustment clause requested by a public utility in an application filed with the commission shall be designed, as determined in the commission's discretion, to:

- (1) Fairly share the risk of fuel cost changes between the public utility and its customers;
- (2) Provide the public utility with sufficient incentive to reasonably manage or lower its fuel costs and encourage greater use of renewable energy;
- (3) Allow the public utility to mitigate the risk of sudden or frequent fuel cost changes that cannot otherwise reasonably be mitigated through other commercially available means, such as through fuel hedging contracts;
- (4) Preserve, to the extent reasonably possible, the public utility's financial integrity; and
- (5) Minimize, to the extent reasonably possible, the public utility's need to apply for frequent applications for general rate increases to account for the changes to its fuel costs. [L 1959, c 239, §1; am L 1962, c 25, §2; Supp, §104-15; am L 1967, c 28, §1 and c 276, §1; HRS §269-16; am L 1973, c 149, §1(c); am L 1976, c 10, §1; am L 1979, c 111, §11; am L 1982, c 222, §2; am L 1983, c 98, §2(1), (2); am L 1984, c 289, §1; am L 1988, c 250, §2; am L 1989, c 189, §1;

am L 1998, c 195, §2; am L 2004, c 168, §2; am L 2006, c 162, §2; am L 2014, c 95, §2]

Attorney General Opinions

Allowances paid by gas and electric utilities under their promotional programs constituted rebates. Att. Gen. Op. 65-18.

PUC may permit Honolulu Rapid Transit to charge reduced rates for senior citizens during non-peak hours. Att. Gen. Op. 69-30.

Operation of a fuel oil adjustment clause is not a "rate increase". "Rate" is synonymous with "rate schedule". Att. Gen. Op. 76-1.

Case Notes

May not regulate rates and charges in interstate commerce. 24 H. 136.

Appeal to supreme court directly does not lie from order requiring carrier to relocate tracks. 25 H. 332.

Hawaiian Telephone, only Interstate Commerce Commission may fix rates. 26 H. 508.

Regulation of interisland service. 32 H. 127.

Rates for gas. 33 H. 487.

Interlocutory order not appealable. 33 H. 697.

Constitutional. 33 H. 890, aff'd 96 F.2d 412, aff'd 305 U.S. 306.

Applicant before PUC aggrieved, when. 44 H. 634, 637, 361 P.2d 390.

Section was inoperative with respect to air carrier rates during the 2-year transition period when C.A.B. jurisdiction over air carriers was continued by §15 of Admission Act. 44 H. 634, 361 P.2d 390.

Director of regulatory agencies as protector of consumer's interest is party to proceeding before PUC. 54 H. 663, 513 P.2d 1376.

To comply with §91-12, commission must rule on all proposed findings and its findings must be reasonably clear. 54 H. 663, 513 P.2d 1376.

Persons aggrieved who were involved as participants in hearings may appeal to supreme court when PUC staff fails to do so. 56 H. 260, 535 P.2d 1102.

Utility's promotional expenditures should not have been allowed for ratemaking purposes. 56 H. 260, 535 P.2d 1102.

Tariff rate based partially upon value of equipment not owned by taxpayer does not properly reflect taxpayer's gross income. 57 H. 477, 559 P.2d 283.

Commission must make findings of fact as required by §91-12 when issuing interim rate increases. 60 H. 166, 590 P.2d 524.

Granting of interim rate increases conditioned on a refund provision is a valid exercise of commission's powers. 60 H. 166, 590 P.2d 524.

Rehearings by administrative bodies are at their discretion. 60 H. 166, 590 P.2d 524.

Charges made by a public utility are governed by tariff filed with PUC. 60 H. 582, 593 P.2d 375.

Under "just and reasonable" standard, it is the result reached and not the method employed which is controlling. 60 H. 625, 594 P.2d 612; 67 H. 370, 689 P.2d 741; 67 H. 425, 690 P.2d 274.

No abuse of discretion in utilizing original cost method of valuating rate base, or in concluding that telephone company's plant-in-service was used or useful for public utility purposes. 65 H. 293, 651 P.2d 475.

Commission did not arbitrarily limit rate award. 67 H. 370, 689 P.2d 741.

Rebuttable presumption that a contribution was made by lot owners, or lessees, for construction of a utility system arises only if certain factors reveal intent by developer to obtain double recovery for its capital construction costs; commission erred in applying rebuttable presumption. 83 H. 132, 925 P.2d 302.

Under subsection (f) (1997), direct appeal to supreme court from PUC order lies only when PUC order pertains to regulation of utility rates or ratemaking procedures; supreme court thus lacked jurisdiction to hear direct appeal for PUC order pertaining to placement of transmission line. 85 H. 322, 944 P.2d 1265.

Under the filed-rate doctrine, telephone customers' claims failed as a matter of law where customers could not demonstrate that telephone company's allegedly inadequate disclosures constituted an unfair or deceptive trade practice because (1) company's tariffs on file with the public utilities commission disclosed that fees should be assessed against customers receiving touch calling services; (2) knowledge of these disclosures contained in the tariff was imputed to the customers, and, thus, (3) customers could prove neither the injury nor the likelihood of damage that is required under §480-2 or chapter 481A. 109 H. 69, 123 P.3d 194.

The statutes and rules cited by defendants did not require dismissal of the billing disputes on the basis of primary jurisdiction. Sections 269-6 and 269-37 and this section did not place the action in the instant case within the "special competence" of the public utilities commission (PUC); the statutes provided the PUC with authority to take certain actions

as an administrative agency, but the authority granted to the PUC over certain types of billing disputes is shared with the courts. 131 H. 257, 318 P.3d 97 (2013).

Where (1) sewage system operator was a regulated public utility whose 2004 tariff was duly filed and approved by the commission and set the rates for all of the operator's customers; (2) the State was a sewerage customer; and (3) the application of the 2004 tariff rates to the State conflicted with the free services provision in the 1961 agreement with the State, the filed-rate doctrine prohibited the enforcement of a promised contract rate that contradicted the published tariff rate. 125 H. 210 (App.), 257 P.3d 223 (2011).

Section does not require a cost of service study; because it is not the method used in determining the rate, but rather the outcome that is dispositive, a cost of service study is not a necessary component of a rate increase proceeding; without a further showing of an unjust and unreasonable result, the lack of a cost of service study alone was not enough to show that the public utilities commission erred in approving the utility's requested rate increase. 127 H. 234 (App.), 277 P.3d 328 (2012).

Where county could not illustrate how utility's purported illegal use of the well without a proper permit or use of the irrigation system without conducting an environmental assessment generated unnecessary costs that would not have been incurred if utility had complied with the law, county failed to demonstrate how the public utilities commission's approval of a rate increase was not "just and reasonable". 127 H. 234 (App.), 277 P.3d 328 (2012).

In order for a charge to be considered unjust and unreasonable, the charge must be based on expenses unnecessarily incurred as the result of illegal activity; where county failed to demonstrate how the lack of a certificate of public convenience and necessity for the Kualapuu area resulted in unnecessary expenses that would not have occurred had water utility services company complied with the law by having the certificate, county failed to demonstrate how the rate approved by the public utilities commission was unjust and unreasonable. 127 H. 404 (App.), 279 P.3d 69 (2012).

The language of this section grants to the public utilities commission broad discretionary power in the area of rate regulation, provided that the rates set are just and reasonable; as the standard for allowing attorney's fees to be passed on to the consumer in a rate case proceeding differs from the standard used in civil cases where there is a need to distinguish between types of fees, the commission correctly held that all reasonable rate case activities were reimbursable under regulatory expense;

the commission thus did not err in approving \$225,000 in total regulatory expenses, including non-itemized attorneys' bills. 127 H. 404 (App.), 279 P.3d 69 (2012).

" **[\$269-16.2] Approval of rules of a public utility.** Any rules, guidelines, or other standards of a public utility which interpret federal or state laws governing nonutility generators, or which make a nonutility generator monetarily responsible for the public utility's costs and profits of doing business as a public utility, shall be approved by the public utilities commission before adoption. As used in this section, a "nonutility generator" means a person that produces electric power but is not a public utility. [L 1994, c 176, §2]

" **§269-16.21 REPEALED.** L 2001, c 272, §8.

" **[\$269-16.22] Power purchase agreements; cost recovery for electric utilities.** All power purchase costs, including costs related to capacity, operations and maintenance, and other costs that are incurred by an electric utility company, arising out of power purchase agreements that have been approved by the public utilities commission and are binding obligations on the electric utility company, shall be allowed to be recovered by the utility from the customer base of the electric utility company through one or more adjustable surcharges, which shall be established by the public utilities commission. The costs shall be allowed to be recovered if incurred as a result of such agreements unless, after review by the public utilities commission, any such costs are determined by the commission to have been incurred in bad faith, out of waste, out of an abuse of discretion, or in violation of law. For purposes of this section, an "electric utility company" means a public utility as defined under section 269-1, for the production, conveyance, transmission, delivery, or furnishing of electric power. [L 2012, c 55, §2]

" **§269-16.3 Statewide rate increase surcharge assessment on ratepayers in emergency situations.** (a) Any utility that sustains damage to its facilities as a result of a state of emergency or local state of emergency, including emergencies as defined in chapter 127A, and incurs costs related to the restoration and repair of its facilities which, if assessed only on the utility ratepayers of the affected utility service territory, may result in a rate increase of more than fifteen per cent for the average ratepayer in that utility service territory, may apply to the public utilities commission in accordance with this section to recover the costs provided herein through a monthly surcharge which shall be assessed on a

statewide basis and shall be based on the utility's net restoration and repair costs; provided that the surcharge shall not result in an assessment of more than fifteen per cent for the average ratepayer in each of the other utility service territories and provided further that the public utilities commission shall exclude ratepayers in utility service territories with rates that may be substantially higher than other utility service territories in the State.

The public utilities commission shall have the authority to initially set, or subsequently revise, the surcharge to reflect the actual net restoration and repair costs incurred after deduction of amounts received from outside sources of recovery. Such outside sources of recovery shall include, but not be limited to, insurance proceeds, government grants, and shareholder contributions.

(b) Any utility meeting the criteria set forth in subsection (a) may file an application with the public utilities commission setting forth its estimated restoration and repair costs as well as the estimated amount or amounts that may be received from outside sources of recovery.

(c) Within ninety days after filing of the utility's application, the public utilities commission, upon notice, hearing, and a determination that the application is just, reasonable, and in the public interest, shall:

- (1) Decide the extent to which it is just, reasonable, and in the public interest for the damaged utility's ratepayers or shareholders, or both, to bear part or all of the repair and restoration costs;
- (2) Determine whether the estimated amount of any net restoration and repair costs to be borne by the ratepayers of the damaged utility would result in a rate increase of more than fifteen per cent for the average residential ratepayer in that utility's service territory;
- (3) Issue an order allowing the affected utility or another utility acting on behalf of the affected utility to implement a monthly surcharge on all ratepayers statewide for the type of service rendered by the affected utility if the public utilities commission determines pursuant to paragraph (2) that a rate increase of more than fifteen per cent would otherwise be assessed;
- (4) Exclude from any such order ratepayers in utility service territories with rates that are substantially higher than other utility service territories in the State; and

- (5) Periodically review the order to ensure that the amounts collected by, or on behalf of, the utility shall not exceed the amount determined by the public utilities commission to be the net restoration and repair costs actually incurred.

The surcharge shall be assessed over a period to be determined by the public utilities commission; provided, however, that the period shall not exceed ten years.

(d) Any outside sources of recovery, including but not limited to grants from federal or state sources, shall be used to offset any repair and restoration costs except where the use of such funds is otherwise limited by the grantor thereof.

(e) For the purposes of this section, the term "restoration and repair costs" means those costs necessary to restore facilities damaged by a state-declared emergency to a functional level substantially the same as that existing immediately before the emergency and does not include the costs of upgrades or enhancements.

(f) Any utility authorized by the public utilities commission to assess a surcharge pursuant to this section shall state separately the amount of the assessment on each affected ratepayer's monthly bill. [L 1993, c 337, §4; am L 2014, c 111, §9]

" **[\$269-16.4] Annual fuel mix disclosure.** (a) Beginning June 1, 2004, and every June 1 thereafter, each retail supplier of electricity shall disclose fuel mix information by generation category to its existing and new retail electricity customers for the prior calendar year.

(b) Beginning June 1, 2004, and every June 1 thereafter, each retail supplier of electricity shall state the average retail price of electricity (per kilowatt-hour) for each rate class of service for the prior calendar year. The average retail price of electricity for each rate class of service shall be determined by dividing the total electric revenues for each rate class of service by the total kilowatt-hours sold to each respective rate class.

(c) The disclosure required by this section shall be:

- (1) Printed either on the customer's bill or as a bill insert; provided that this disclosure requirement shall not result in increased costs to ratepayers; and
- (2) Posted and updated on the supplier's internet website, if any.

(d) As used in this section, the term "fuel mix" means the electricity sold to retail electricity customers expressed in terms of percentage contribution by generation category. The

total fuel mix included in each disclosure shall total one hundred per cent. [L 2003, c 147, §2]

" **§269-16.5 Lifeline telephone rates.** (a) The public utilities commission shall implement a program to achieve lifeline telephone rates for residential telephone users.

(b) "Lifeline telephone rate" means a discounted rate for residential telephone users identified as elders with limited income and the handicapped with limited income as designated by the commission.

(c) The commission shall require every telephone public utility providing local telephone service to file a schedule of rates and charges providing a rate for lifeline telephone subscribers.

(d) Nothing in this section shall preclude the commission from changing any rate established pursuant to subsection (a) either specifically or pursuant to any general restructuring of all telephone rates, charges, and classifications. [L 1986, c 116, §3; am L 1990, c 67, §8]

" **§269-16.6 Telecommunications relay services for the deaf, persons with hearing disabilities, and persons with speech disabilities.** (a) The public utilities commission shall implement intrastate telecommunications relay services for the deaf, persons with hearing disabilities, and persons with speech disabilities.

(b) The commission shall investigate the availability of experienced providers of quality telecommunications relay services for the deaf, persons with hearing disabilities, and persons with speech disabilities. The provision of these telecommunications relay services to be rendered on or after July 1, 1992, shall be awarded by the commission to the provider or providers the commission determines to be best qualified to provide these services. In reviewing the qualifications of the provider or providers, the commission shall consider the factors of cost, quality of services, and experience, and such other factors as the commission deems appropriate.

(c) If the commission determines that the telecommunications relay service can be provided in a cost-effective manner by a service provider or service providers, the commission may require every intrastate telecommunications carrier to contract with such provider or providers for the provision of the telecommunications relay service under the terms established by the commission.

(d) The commission may establish a surcharge to collect customer contributions for telecommunications relay services required under this section.

(e) The commission may adopt rules to establish a mechanism to recover the costs of administering and providing telecommunications relay services required under this section.

(f) The commission shall require every intrastate telecommunications carrier to file a schedule of rates and charges and every provider of telecommunications relay service to maintain a separate accounting for the costs of providing telecommunications relay services for the deaf, persons with hearing disabilities, and persons with speech disabilities.

(g) Nothing in this section shall preclude the commission from changing any rate established pursuant to this section either specifically or pursuant to any general restructuring of all telephone rates, charges, and classifications.

(h) As used in this section:

"Telecommunications relay services" means telephone transmission services that provide an individual who has a hearing or speech disability the ability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using wire or radio voice communication services. "Telecommunications relay services" includes services that enable two-way communication using text telephones or other nonvoice terminal devices, speech-to-speech services, video relay services, and non-English relay services. [L 1988, c 207, §2; am L 1989, c 295, §2; am L 1991, c 63, §2; am L 1995, c 225, §§4, 5; am L 2003, c 50, §2]

" **§269-16.7 REPEALED.** L 2003, c 50, §3.

" **[§269-16.8] Aggregators of telephone service requirements.**

(a) For the purposes of this section:

"Aggregator" means every person or entity that is not a telecommunications carrier, who, in the ordinary course of its business, makes telephones available and aggregates the calls of the public or transient users of its business, including but not limited to a hotel, motel, hospital, or university, that provides operator-assisted services through access to an operator service provider.

"Operator service" means a service provided by a telecommunications company to assist a customer to complete a telephone call.

(b) The commission, by rule or order, shall adopt and enforce operating requirements for the provision of operator-assisted services by an aggregator. These requirements shall include, but not be limited to, the following:

- (1) Posting and display of information in a prominent and conspicuous fashion on or near the telephone equipment owned or controlled by the aggregator which states the identity of the operator service provider, the operator service provider's complaint handling procedures, and means by which the customer may access the various operator service providers.
- (2) Identification by name of the operator service provider prior to the call connection and, if not posted pursuant to subsection (b)(1), a disclosure of pertinent rates, terms, conditions, and means of access to various operator service providers and the local exchange carriers; provided that the operator service provider shall disclose this information at any time upon request by the customer.
- (3) Allowing the customer access to any operator service provider operating in the relevant geographic area through the access method chosen by the provider or as deemed appropriate by the commission.
- (4) Other requirements as deemed reasonable by the commission in the areas of public safety, quality of service, unjust or discriminatory pricing, or other matters in the public interest. [L 1989, c 241, §1]

" **§269-16.85 Retail intrastate services; fully competitive.**

(a) Notwithstanding section 269-16.9 or any other law to the contrary, the public utilities commission shall treat retail intrastate telecommunications services, under the commission's classification of services relating to costs, rates, and pricing, as fully competitive and apply all commission rules in accordance with that designation. In addition, a telecommunications carrier shall not be required to obtain approval or provide any cost support or other information to establish or otherwise modify in any manner its rates, fares, and charges, or to bundle any service offerings into a single or combined price package; provided that a telecommunications carrier, except upon receiving the approval of the commission, shall not charge a higher rate for any retail telecommunications basic exchange service than the rate for the same service included in the telecommunications carrier's filed tariff. All rates, fares, charges, and bundled service offerings shall be filed with the public utilities commission for information purposes only.

(b) This section shall apply to retail rates charged for service to end-user consumers only and shall not apply to wholesale rates charged for services provided by a telecommunications carrier to another telecommunications

provider, a wireless communications provider, a voice over internet protocol communications provider, or other similar communications provider.

(c) Nothing herein shall modify any requirements of a telecommunications carrier to provide lifeline telephone service, comply with carrier of last resort obligations, or comply with applicable service quality standards. [L 2009, c 180, §2; am L 2010, c 8, §1; am L 2012, c 74, §2]

" **§269-16.9 Telecommunications providers and services.** (a) Notwithstanding any provision of this chapter to the contrary, the commission, upon its own motion or upon the application of any person, and upon notice and hearing, may exempt a telecommunications provider or a telecommunications service from any or all of the provisions of this chapter, except the provisions of section 269-34, upon a determination that the exemption is in the public interest. In determining whether an exemption is in the public interest, the commission shall consider whether the exemption promotes state policies in telecommunications, the development, maintenance, and operation of effective and economically efficient telecommunications services, and the furnishing of telecommunications services at just and reasonable rates and in a fair manner in view of the needs of the various customer segments of the telecommunications industry. Among the specific factors the commission may consider are:

- (1) The responsiveness of the exemption to changes in the structure and technology of the State's telecommunications industry;
- (2) The benefits accruing to the customers and users of the exempt telecommunications provider or service;
- (3) The impact of the exemption on the quality, efficiency, and availability of telecommunications services;
- (4) The impact of the exemption on the maintenance of fair, just, and reasonable rates for telecommunications services;
- (5) The likelihood of prejudice or disadvantage to ratepayers of basic local exchange service resulting from the exemption;
- (6) The effect of the exemption on the preservation and promotion of affordable, universal, basic telecommunications services as those services are determined by the commission;
- (7) The resulting subsidization, if any, of the exempt telecommunications service or provider by nonexempt services;

- (8) The impact of the exemption on the availability of diversity in the supply of telecommunications services throughout the State;
- (9) The improvements in the regulatory system to be gained from the exemption, including the reduction in regulatory delays and costs;
- (10) The impact of the exemption on promoting innovations in telecommunications services;
- (11) The opportunity provided by the exemption for telecommunications providers to respond to competition; and
- (12) The potential for the exercise of substantial market power by the exempt provider or by a provider of the exempt telecommunications service.

(b) The commission shall expedite, where practicable, the regulatory process with respect to exemptions and shall adopt guidelines under which each provider of an exempted service shall be subject to similar terms and conditions.

(c) The commission may condition or limit any exemption as the commission deems necessary in the public interest. The commission may provide a trial period for any exemption and may terminate the exemption or continue it for such period and under such conditions and limitations as it deems appropriate.

(d) The commission may require a telecommunications provider to apply for a certificate of public convenience and necessity pursuant to section 269-7.5; provided that the commission may waive any application requirement whenever it deems the waiver to be in furtherance of the purposes of this section. The exemptions under this section may be granted in a proceeding for certification or in a separate proceeding.

(e) The commission may waive other regulatory requirements under this chapter applicable to telecommunications providers when it determines that competition will serve the same purpose as public interest regulation.

(f) If any provider of an exempt telecommunications service or any exempt telecommunications provider elects to terminate its service, it shall provide notice of this to its customers, the commission, and every telephone public utility providing basic local exchange service in this State. The notice shall be in writing and given not less than six months before the intended termination date. Upon termination of service by a provider of an exempt service or by an exempt provider, the appropriate telephone public utility providing basic local exchange service shall ensure that all customers affected by the termination receive basic local exchange service. The commission shall, upon notice and hearing or by rule, determine the party or parties who shall bear the cost, if

any, of access to the basic local exchange service by the customers of the terminated exempt service.

(g) Upon the petition of any person or upon its own motion, the commission may rescind any exemption or waiver granted under this section if, after notice and hearing, it finds that the conditions prompting the granting of the exemption or waiver no longer apply, or that the exemption or waiver is no longer in the public interest, or that the telecommunications provider has failed to comply with one or more of the conditions of the exemption or applicable statutory or regulatory requirements.

(h) For purposes of this section, the commission, upon determination that any area of the State has less than adequate telecommunications service, shall require the existing telecommunications provider to show cause as to why the commission should not authorize an alternative telecommunications provider for that area under the terms and conditions of this section. [L 1990, c 49, §2; am L 1994, c 80, §3; am L 1995, c 225, §6]

" **[\$269-16.91] Universal service subsidies.** (a) For any alternative telecommunications provider authorized to provide basic local exchange service to any area of the State pursuant to section 269-16.9(h), the commission may consider the following:

- (1) Transferring the subsidy, if any, of the local exchange provider's basic residential telephone service to the alternative provider; and
- (2) Transferring from the local exchange carrier to the alternative provider the amounts, if any, generated by the local exchange provider's services other than basic residential telephone service and which are used to subsidize basic residential service in the area.

(b) To receive the subsidy amounts from the local exchange service provider, the alternative telecommunications provider shall be required, to the extent possible, to obtain basic residential service subsidies from both the local exchange service provider and national universal service providers. [L 1994, c 80, §2]

" **[\$269-16.92] Changes in subscriber carrier selections; prior authorization required; penalties for unauthorized changes.** (a) No telecommunications carrier shall initiate a change in a subscriber's selection or designation of a long-distance carrier without first receiving:

- (1) A letter of agency or letter of authorization;

- (2) An electronic authorization by use of a toll-free number;
- (3) An oral authorization verified by an independent third party; or
- (4) Any other prescribed authorization;

provided that the letter or authorization shall be in accordance with verification procedures that are prescribed by the Federal Communications Commission or the public utilities commission. For purposes of this section, "telecommunications carrier" does not include a provider of commercial mobile radio service as defined by 47 United States Code section 332(d)(1).

(b) Upon a determination that any telecommunications carrier has engaged in conduct that is prohibited in subsection (a), the public utilities commission shall order the carrier to take corrective action as deemed necessary by the commission and may subject the telecommunications carrier to administrative penalties pursuant to section 269-28. Any proceeds from administrative penalties collected under this section shall be deposited into the public utilities commission special fund.

The commission, if consistent with the public interest, may suspend, restrict, or revoke the registration, charter, or certificate of the telecommunications carrier, thereby denying, modifying, or limiting the right of the telecommunications carrier to provide service in this State.

(c) The commission shall adopt rules, pursuant to chapter 91, necessary for the purposes of this section. The commission may notify customers of their rights under these rules. [L 1998, c 225, §1]

" **§269-16.93 Release of domestic abuse victims from shared wireless plans.** (a) All wireless telecommunications service providers shall release, without charge, penalty, or fee, any victim of domestic abuse from a shared or family wireless service contract involving the victim's abuser; provided that the victim submits an opt-out request in writing and with evidence of domestic abuse as documented by any of the following items:

- (1) Valid police report documenting an instance or series of instances of domestic abuse;
- (2) Order for protection granted pursuant to chapter 586; or
- (3) Signed affidavit from a licensed medical or mental health care provider, employee of a court acting within the scope of their employment, or social worker.

(b) When a victim of domestic abuse submits an opt-out request to a wireless telecommunications service provider

pursuant to subsection (a), the wireless telecommunications service provider shall, within forty-eight hours from the time the opt-out request is submitted to the wireless telecommunications service provider:

- (1) Transfer the billing authority and all rights to the wireless telephone number or numbers of a shared wireless plan to the person who has been granted the release pursuant to subsection (a); or
- (2) Remove or release the person, who has been granted the release pursuant to subsection (a), from a shared wireless plan and assign a substitute telephone number or numbers,

without charge, penalty, or fee.

(c) A cause of action shall not lie against any wireless telecommunications service provider, its officers, employees, or agents for the actions taken that are related to the transfer of the billing authority and rights to the wireless telephone number or numbers in accordance with this section.

(d) For purposes of this section:

"Domestic abuse" shall have the same meaning as in section 586-1.

"Wireless telecommunications service" shall have the same meaning as "commercial mobile radio service" as defined in title 47 Code of Federal Regulations section 20.3.

"Wireless telecommunications service provider" means a provider of wireless telecommunications service. [L 2015, c 219, §2; am L 2016, c 9, §1]

Cross References

Transfer or release of domestic abuse victims from shared wireless plans, see §586-5.8.

" **§269-16.95 Emergency telephone service; capital costs; ratemaking.** (a) A public utility providing local exchange telecommunications services may recover the capital cost and associated operating expenses of providing a statewide enhanced 911 emergency telephone service in the public switched telephone network, through:

- (1) A telephone line surcharge; or
- (2) Its rate case.

(b) Notwithstanding the commission's rules on ratemaking, the commission shall expedite and give highest priority to any necessary ratemaking procedures related to providing a statewide enhanced 911 emergency telephone service; provided that the commission may set forth conditions and requirements as the commission determines are in the public interest.

(c) The commission shall require every public utility providing statewide enhanced 911 emergency telephone service to maintain a separate accounting of the costs of providing an enhanced 911 emergency service and the revenues received from related surcharges until the next general rate case. The commission shall further require that every public utility imposing a surcharge shall identify such as a separate line item on all customer billing statements.

(d) This section shall not preclude the commission from changing any rate, established pursuant to this section, either specifically or pursuant to any general restructuring of all telephone rates, charges, and classifications. [L 1993, c 223, §2; am L 1997, c 94, §1]

Cross References

Enhanced 911 services for mobile phones, see chapter 138.

" **§269-17 Issuance of securities.** A public utility corporation may, on securing the prior approval of the public utilities commission, and not otherwise, issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, for the following purposes and no other, namely: for the acquisition of property or for the construction, completion, extension, or improvement of or addition to its facilities or service, or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, for any of the aforesaid purposes except maintenance of service, replacements, and substitutions not constituting capital expenditure in cases where the corporation has kept its accounts for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which the expenditures were made, and the sources of the funds in its treasury applied to the expenditures. As used herein, "property" and "facilities", mean property and facilities used in all operations of a public utility corporation whether or not included in its public utility operations or rate base. A public utility corporation may not issue securities to acquire property or to construct, complete, extend or improve or add to its facilities or service if the commission determines that the proposed purpose will have a material adverse effect on its public utility operations.

All stock and every stock certificate, and every bond, note, or other evidence of indebtedness of a public utility corporation not payable within twelve months, issued without an order of the commission authorizing the same, then in effect, shall be void. [L 1933, c 169, pt of §4; RL 1935, §7955; RL 1945, §4716; RL 1955, §104-16; HRS §269-17; am L 1969, c 276, §1]

Cross References

Administrative procedure, see chapter 91.

Case Notes

Contract for lease of land, which was not a loan and which was not a method of generating capital was not an evidence of indebtedness. 64 H. 289, 639 P.2d 1103.

Cited: 44 H. 634, 635, 361 P.2d 390; 47 H. 1, 7, 384 P.2d 536.

" **§269-17.5 Issuance of voting stock; restrictions.** (a) For purposes of this section "foreign corporation" means a foreign corporation as defined in section 235-1 or a corporation in which a majority of the voting stock is held by a single foreign corporation as defined in section 235-1.

(b) "Nonresident alien" means a person not a citizen of the United States who is not defined as a resident alien by the United States Citizenship and Immigration Services.

(c) No more than twenty-five per cent of the issued and outstanding voting stock of a corporation organized under the laws of the State and who owns, controls, operates, or manages any plant or equipment, or any part thereof, as a public utility within the definition set forth in section 269-1 shall be held, whether directly or indirectly, by any single foreign corporation or any single nonresident alien, or held by any person, unless prior written approval is obtained from the public utilities commission, or unless a transaction is exempt. An exempt transaction is:

- (1) Any purchase or sale by an underwriter; or
- (2) A transaction to acquire shares of a corporation with less than one hundred shareholders and less than \$1,000,000 in assets.

Every assignment, transfer, contract, or agreement for assignment or transfer of any shares in violation of this section shall be void and of no effect; and no such transfer shall be made on the books of the corporation. Nothing herein shall be construed to make illegal the holding of stock lawfully

held, directly or indirectly, prior to June 4, 1977. [L 1977, c 168, §2; am L 1998, c 73, §1; am L 2005, c 22, §11]

" **§269-18 Acquisition of stock of another public utility.**
No public utility corporation shall purchase or acquire, take or hold, any part of the capital stock of any other public utility corporation, organized or existing under or by virtue of the laws of the State, without having been first authorized to do so by the order of the public utilities commission. Every assignment, transfer, contract, or agreement for assignment or transfer of any stock by or through any person or corporation to any corporation or otherwise in violation of this section shall be void and of no effect; and no such transfer shall be made on the books of any public utility. Nothing herein shall be construed to make illegal the holding of stock lawfully acquired before July 1, 1933. [L 1933, c 169, pt of §4; RL 1935, §7956; RL 1945, §4717; RL 1955, §104-17; HRS §269-18]

Case Notes

State-federal jurisdiction over interisland air transportation. 235 F. Supp. 990; 47 H. 1, 87, 384 P.2d 536.

" **§269-19 Merger and consolidation of public utilities.** (a)
Except as provided in subsection (b), no public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

(b) A public utility, under circumstances that it deems exigent and in its judgment require a response that rapidly restores one of its customers to normal, or near normal, operating status in order to prevent serious disruption of essential public services, or avoid serious risk to public safety, or to mitigate severe economic losses to that customer, may transfer, assign, or otherwise dispose of its property without prior approval from the public utilities commission as required in subsection (a); provided that in so doing:

- (1) The public utility does not unduly hinder or degrade the public utility's operation with respect to its services or other customers;
- (2) The public utility is duly compensated for its property; and
- (3) The public utility reports in detail to the public utilities commission within thirty days of any such action unless otherwise approved by the public utilities commission for good cause shown.

For purposes of this subsection, "property" does not include real property. [L 1933, c 169, pt of §4; RL 1935, §7957; RL 1945, §4718; RL 1955, §104-18; HRS §269-19; am L 2008, c 7, §2]

Case Notes

Section applies to lease of air space above land used by a public utility, and approval of commission must be obtained. 54 H. 402, 507 P.2d 755.

PUC did not fail to protect public interest with regard to HECO's contract for purchase of land in Heeia Kea. 64 H. 289, 639 P.2d 1103.

Unsecured obligation to make payments in future is not an encumbrance. 64 H. 289, 639 P.2d 1103.

Cited: 178 F. Supp. 637, 640.

" **[\$269-19.5] Relations with an affiliated interest; definition; contracts with affiliates filed and subject to commission action.** (a) For purposes of this section "affiliated interests" with a public utility includes the following:

- (1) Every person owning or holding, directly or indirectly, ten per cent or more of the voting securities of a public utility, and every person having ownership of ten per cent or more of voting securities of a person owning ten per cent or more of the voting securities of a public utility;
- (2) Every corporation ten per cent or more of whose voting securities is owned by any person owning ten per cent or more of the voting securities of a public utility;
- (3) Every person who is an officer or director of a public utility;
- (4) Every corporation operating a public utility, or providing engineering, accounting, legal, or similar service to public utilities or common carriers by water, which has three or more officers or three or more directors in common with a public utility, and

every other corporation which has directors in common with a public utility where the number of common directors is more than one-third of the total number of the utility's directors.

(b) The purpose of this section is to encourage companies providing essential utility and regulated transport service to Hawaii consumers to obtain their services, supplies, and equipment by relying, to the extent practicable, on competitive procurement practices; provided that when companies obtain their services, supplies, and equipment from affiliated interests, the contracts and agreements between the regulated entity and its affiliates must be shown by clear and convincing evidence to be in furtherance of the interests of the public.

(c) No contract or agreement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or agreement for the purchase, sale, lease, furnishing or exchange of any real or personal property rights, including but not limited to real estate, improvements on land, equipment, leasehold interests, easements, rights-of-way, franchises, licenses, permits, trademarks, and copyrights, made or entered into after July 1, 1988, between a public utility and any affiliated interest shall be valid or effective unless and until the contract or agreement has been received by the commission. It shall be the duty of every public utility to file with the commission a verified copy of any contract or agreement with an affiliate having a face value of at least \$300,000, or a verified summary of any unwritten contract or agreement having a face value of at least \$300,000 within forty-five days of the effective date of the contract or agreement. Each and every contract or agreement between a public utility and an affiliate for capital expenditures other than for real property or an interest therein, shall be accompanied with price quotations provided by at least two nonaffiliated suppliers, providers, or purveyors, or if such price quotations cannot be obtained without substantial expense to the utility, that the public utility verify that fact by affidavit; provided that all contracts or agreements effective at the time of a general rate proceeding which were discoverable and subject to review by the commission, shall be valid and not subject to subsequent regulatory review and action by the commission; provided further, however, that notwithstanding any other provision to the contrary, there shall be no transfer of real property, or interest in real property between a public utility and an affiliate, without prior approval of the commission, after hearing, wherein the public utility must show that the transfer

is in the best interest of the public utility and all of its customers.

No affirmative action is required by the commission in regards to the filing of the contract or agreement; provided however, that if the commission, in its discretion, determines that the terms and conditions of the contract or agreement to be unreasonable or otherwise contrary to the public interest, the commission shall notify the public utility of its determination, whereupon the public utility shall have the option to alter, revise, amend, or terminate the contract or agreement, or assume the risk that future payments for performance of the contract or agreement will be deemed unreasonable and excluded by the commission for ratemaking purposes.

(d) In any proceeding, whether upon the commission's own motion or upon application or complaint, involving the rates or practices of any public utility, the commission may exclude from the accounts of the public utility any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as above described, under existing contracts or agreements with the affiliated interest unless the public utility shall establish by clear and convincing evidence the reasonableness of the payment or compensation.

(e) The commission shall have continuing supervisory control over the terms and conditions of the contracts and agreements above described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over modifications of or amendments to contracts or agreements as it has over original contracts or agreements. The fact that the public utility may have entered into contracts or agreements without submittal of documents to the commission shall not preclude disallowance or disapproval of payments made pursuant thereto, for ratemaking purposes, if upon actual experience under the contracts or agreements it appears that the payments provided for or made are or were unreasonable. Every contract or agreement shall be expressly conditioned upon the reserved power of the commission to take appropriate ratemaking actions if, and as necessary, subsequent to submittal of the contract or agreement in order to protect and promote the public interest.

(f) Whenever the commission shall discover that any public utility is giving effect to any contract or agreement without the contract or agreement having been received by the commission for review, as required by this section, the commission has authority to issue an order to the public utility to show cause why the public utility should not cease and desist from making any payments or otherwise giving any effect to the terms of the contract or agreement, and the public utility shall have the

opportunity to show with clear and convincing evidence that the contract or agreement is in the best interest of the public utility and all of its customers.

(g) None of the provisions of this section shall apply to transactions with affiliated interests where the total consideration involved in a transaction is less than \$300,000 for any calendar year provided that multiple payments under any contract or agreement shall be added together for purposes of construing this provision; and provided, further, that the provisions of this section shall apply to any contract or agreement structured specifically to avoid regulation hereunder.

(h) Transactions between affiliated Hawaii based utilities shall be exempt from the provisions of this section. [L 1988, c 368, §1]

" **§269-20 Certificates of public convenience and necessity for water carriers.**

(a) No person which holds itself out to the general public to engage in the transportation by water of passengers or property or any class or classes thereof for compensation, between points in the State of Hawaii, shall operate unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the commission authorizing such transportation; provided that this section shall not apply to any carrier by water to the extent that the carrier is excluded from the definition of a public utility under section [269-1(2)(E) and (F)].

(b) Applications for certificates shall be made in writing under oath to the commission in such form as it requires.

(c) A certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules and regulations of the commission thereunder, and that the proposed service, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. Any certificate issued shall specify the service to be rendered and the routes and ports which the water carrier is to serve and there shall be attached to the exercise of the privileges granted by the certificate, at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as the public convenience and necessity may require.

(d) The commission may at any time suspend, change or revoke such certificate in the manner provided in section 271-19. [L 1933, c 169, pt of §4; RL 1945, §4719; am L 1945, c 189,

§1; am L 1949, c 366, §2; RL 1955, §104-19; HRS §269-20; am L 1969, c 55, §1]

Revision Note

Provisions of subsection (c) authorizing the issuance of a certificate to a carrier under L 1969, c 55, §1, deleted as obsolete.

Case Notes

Acceptance of certificate and benefits, estops holder from contesting validity of law under which certificate issued. 33 H. 813.

Certificate within police power; not a franchise. 34 H. 52.

Ownership of franchise does not prevent application for a certificate for other purposes. 40 H. 579.

Regulation of depreciation practice of utilities; scope of court's review of commission order. 42 H. 233.

" **§§269-21, 22 REPEALED.** L 1969, c 55, §2.

" **§269-23 Liability of initial and delivering common carrier for loss; limitation of liability; notice and filing of claim.**

Any common carrier receiving property for transportation from a point in Hawaii to a point in Hawaii shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to the property caused by it or by any common carrier or transportation company to which the property may be delivered or over whose line or lines the property may pass when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt the common carrier from the liability imposed; and any such common carrier so receiving property for transportation or any common carrier or transportation company delivering the property so received and transported shall be liable to the lawful holder of the receipt or bill of lading or to any party entitled to recover thereon, whether the receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any common carrier or transportation company to which the property may be delivered or over whose line or lines the property may pass when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any receipt or bill of lading, or in any contract, rule, regulation, or in any

tariff filed with the public utilities commission; and any such limitation, without respect to the manner or form in which it is sought to be made is declared to be unlawful and void; provided that if the loss, damage, or injury occurs while the property is in the custody of a carrier by water the liability of the carrier shall be determined by the bill of lading of the carrier by water and by and under the laws and regulations applicable to transportation by water, and the liability of the initial or delivering carrier shall be the same as that of the carrier by water; provided that the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case the declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and any tariff schedule which may be filed with the commission pursuant to the order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon; and the commission may make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation; provided further that nothing in this section shall deprive any holder of the receipt or bill of lading of any remedy or right of action which the holder has under the existing law; provided further that it shall be unlawful for any such receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than four months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice; and provided further that the liability imposed by this section shall also apply in the case of property reconsigned or diverted in accordance with the applicable tariffs filed as provided by the commission. [L 1961, c 66, §1; am L 1963, c 193, §32; Supp, §104-21.5; HRS §269-23; gen ch 1985]

Attorney General Opinions

Discussion of state-federal jurisdiction over interisland air carriers. Att. Gen. Op. 71-3.

Case Notes

Onus on carrier to disprove negligence when goods are damaged while in carrier's possession. 8 H. 525.

" **§269-24 REPEALED.** L 1981, c 167, §2.

" **§269-25 Valuations.** The public utilities commission may either upon its own motion or upon application by any utility for any order where the commission deems it advisable and to the best interest of the public and the utility cause a valuation to be made to ascertain for any purpose specified in this chapter the value of the property of any public utility and every fact and element of value which in its judgment may or does have any bearing on such value. The commission may make revaluations and ascertain the value of all additions, betterments, extensions, and acquisitions of property of any public utility. [L 1933, c 169, pt of §4; RL 1935, §7960; RL 1945, §4721; RL 1955, §104-22; HRS §269-25]

" **§269-26 Investigation of water rates charged by lessee under state leases.** The public utilities commission shall investigate charges made by all persons for water supplied to consumers for domestic uses and purposes, where the water supplied is secured by virtue of a lease from the State, requiring rates to be fixed by the licensee with the approval of the department of land and natural resources. If it appears upon investigation that the water supplied to consumers for domestic uses and purposes is by virtue of a lease requiring rates to be fixed by the licensee, with the approval of the department, then the public utilities commission shall report to the department the result of the investigation, and whether the rates charged to consumers are reasonable or not. [L 1917, c 238, §1; RL 1925, §2203; RL 1935, §7961; RL 1945, §4722; RL 1955, §104-23; am L Sp 1959 2d, c 1, §21; am L 1961, c 132, §2; HRS §269-26]

" **[[§269-26.5] Preferential water rates for agricultural activities.** (a) It is the policy of the State to promote the long-term viability of agriculture by establishing mechanisms that provide for preferential rates for potable water for

agricultural activities. The public utilities commission shall have the authority to establish preferential rates for potable water used for agricultural activities in a public utility's service area.

(b) Upon receipt of a bona fide request for preferential rates for potable water to be used for agricultural activities, and proof that the customer engages in agricultural activities, a public utility shall provide proposed preferential rates for potable water to be used only for qualified agricultural activities to the public utilities commission for approval. All such rates approved by the public utilities commission shall be subsidized by the potable water rates charged to other customers of the public utility if required as determined by the public utilities commission. In reviewing the proposed preferential rates, the public utilities commission, in consultation with the department of agriculture, may establish additional criteria to qualify bona fide agribusinesses for water used solely for agricultural activities. For rate cases initiated pursuant to this section, the public utilities commission shall allow the recovery of any reasonable unamortized costs incurred by the public utility in its previous rate case; provided however, upon full amortization of these costs, rates shall be adjusted accordingly. [L 2008, c 169, §2]

" **[\$269-26.6] Preferential water carrier service rates for agricultural activities.** The public utilities commission may authorize preferential water carrier service rates by tariff for ratepayers that engage in agricultural activities. The application process for obtaining preferential water carrier service rates by tariff may be established by the public utilities commission. [L 2012, c 232, §2]

" **§269-27 Prevention of unreasonable water rates.** In the event the public utilities commission, investigating as provided in section 269-26, reports that in its judgment the rates charged to consumers for water supplied to them for domestic uses and purposes, are not reasonable, the attorney general shall take appropriate action to secure for the consumers reasonable rates for such water, or, if the attorney general is so advised, proceed to cancel the licenses and leases of the persons charging the unreasonable rates. [L 1917, c 238, §2; RL 1925, §2204; RL 1935, §7962; RL 1945, §4723; RL 1955, §104-24; HRS §269-27; gen ch 1985]

" **[\$269-27.1] Establishment of geothermal energy rates.** (a) The rate payable by a public utility to the producer of geothermal steam or electricity generated from geothermal steam

shall be established by agreement between the public utility and the supplier, subject to approval by the public utilities commission; provided that if the public utility and the supplier fail to reach an agreement for such rate, or if the agreed upon rate is disapproved by the commission, the public utilities commission shall establish a just and reasonable rate for the geothermal steam or electricity generated from geothermal steam supplied to the public utility by the producer.

(b) The producer of geothermal steam or electricity generated from geothermal steam shall be excluded from coverage of the term "public utility" as defined in section 269-1. [L 1978, c 132, §2]

" **§269-27.2 Utilization of electricity generated from nonfossil fuels.** (a) The public utilities commission shall investigate and determine the extent to which electricity generated from nonfossil fuel sources is available to public utilities that supply electricity to the public, which electricity is in excess of that utilized or otherwise needed by the producers for their internal uses and which the producers are willing to make available to the electric public utilities.

(b) The public utilities commission may direct public utilities that supply electricity to the public to arrange for the acquisition of and to acquire electricity generated from nonfossil fuel sources as is available from and the producers are willing and able to make available to the public utilities, and to employ and dispatch the nonfossil fuel generated electricity in a manner consistent with the availability thereof to maximize the reduction in consumption of fossil fuels in the generation of electricity to be provided to the public.

(c) The rate payable by the public utility to the producer for the nonfossil fuel generated electricity supplied to the public utility shall be as agreed between the public utility and the supplier and as approved by the public utilities commission; provided that in the event the public utility and the supplier fail to reach an agreement for a rate, the rate shall be as prescribed by the public utilities commission according to the powers and procedures provided in this chapter.

The commission's determination of the just and reasonable rate shall be accomplished by establishing a methodology that removes or significantly reduces any linkage between the price of fossil fuels and the rate for the nonfossil fuel generated electricity to potentially enable utility customers to share in the benefits of fuel cost savings resulting from the use of nonfossil fuel generated electricity. As the commission deems appropriate, the just and reasonable rate for nonfossil fuel generated electricity supplied to the public utility by the

producer may include mechanisms for reasonable and appropriate incremental adjustments, such as adjustments linked to consumer price indices for inflation or other acceptable adjustment mechanisms.

(d) Upon application of a public utility that supplies electricity to the public, and notification of its customers, the commission, after an evidentiary hearing, may allow payments made by the public utility to nonfossil fuel producers for firm capacity and related revenue taxes to be recovered by the public utility through an interim increase in rates until the effective date of the rate change approved by the commission's final decision in the public utility's next general rate proceeding under section 269-16, notwithstanding any requirements to the contrary of any other provision in this chapter or in the commission's rules or practices; provided the amount recovered by the utility and the amount of increase in rates due to the payments for firm capacity and related revenue taxes to be charged to the consumers of the electricity are found by the commission to be:

- (1) Just and reasonable;
- (2) Not unduly prejudicial to the customers of the public utility;
- (3) Promotional of Hawaii's long-term objective of energy self-sufficiency;
- (4) Encouraging to the maintenance or development of nonfossil fueled sources of electrical energy; and
- (5) In the overall best interest of the general public.

The evidentiary hearing provided for in this subsection shall be conducted expeditiously and shall be limited to evidence related to the above findings. Notwithstanding section 269-16, no public hearing shall be required, except as the commission in its discretion may require. [L 1977, c 102, §3; am L 1982, c 266, §2; am L 1983, c 243, §1; am L 1988, c 246, §2; am L 2004, c 95, §3; am L 2006, c 162, §3; am L 2008, c 207, §4; am L 2009, c 50, §2; am L 2016, c 27, §3]

" **[\$269-27.3] Preferential renewable energy rates; agricultural activities.** It is the policy of the State to promote the long-term viability of agriculture by establishing mechanisms that provide for preferential rates for the purchase of renewable energy produced in conjunction with agricultural activities. The public utilities commission shall have the authority to establish preferential rates for the purchase of renewable energy produced in conjunction with agricultural activities.

Upon receipt of a bona fide request for preferential rates for the purchase of renewable energy produced in conjunction

with agricultural activities, and proof that the renewable energy is produced in conjunction with agricultural activities, a public utility shall forward the request for preferential rates to the public utilities commission for approval. [L 2009, c 185, §2]

" **[§269-27.4] Community-based renewable energy tariffs.** (a) Each electric utility in the State shall file a proposed community-based renewable energy tariff or tariffs with the public utilities commission by October 1, 2015. The public utilities commission shall establish a community-based renewable energy tariff or tariffs, pursuant to section 269-16; provided that the tariff or tariffs are found to be in the public interest.

(b) Any person or entity may own or operate an eligible community-based renewable energy project or projects provided that the person or entity complies with all applicable statutes, rules, tariffs, and regulations governing the ownership and interconnection of such project or projects.

(c) As used in this section:

"Community-based renewable energy tariff" means a tariff approved by the commission that:

- (1) Allows an electric utility customer to participate in an eligible renewable energy project that is providing electricity and electric grid services to the electric utility;
- (2) Allows the electric utility to implement a billing arrangement to compensate those customers for the electricity and electric grid services provided to the electric utility;
- (3) Is designed to provide fair compensation for electricity, electric grid services, and other benefits provided to or by the electric utility, participating ratepayers, and non-participating ratepayers; and
- (4) To the extent possible, standardizes and streamlines the related interconnection processes for community-based renewable energy projects. [L 2015, c 100, §2]

Note

Section is printed as enacted.

" **[§269-27.5] Construction of high-voltage electric transmission lines; hearing.** Whenever a public utility plans to place, construct, erect, or otherwise build a new 46 kilovolt or greater high-voltage electric transmission system above the

surface of the ground through any residential area, the public utilities commission shall conduct a public hearing prior to its issuance of approval thereof. Notice of the hearing shall be given in the manner provided in section 269-16 for notice of public hearings. [L 1976, c 11, §2]

Case Notes

Where general public had substantial opportunity to provide input, public utilities commission had established necessary procedures by which ratepayers could manifest their consent in order to persuade commission that cost of underground routing of transmission lines was acceptable. 81 H. 459, 918 P.2d 561.

" **§269-27.6 Construction of high-voltage electric transmission lines; overhead or underground construction.** (a) Notwithstanding any law to the contrary, whenever a public utility applies to the public utilities commission for approval to place, construct, erect, or otherwise build a new 46 kilovolt or greater high-voltage electric transmission system, either above or below the surface of the ground, the public utilities commission shall determine whether the electric transmission system shall be placed, constructed, erected, or built above or below the surface of the ground; provided that in its determination, the public utilities commission shall consider:

- (1) Whether a benefit exists that outweighs the costs of placing the electric transmission system underground;
- (2) Whether there is a governmental public policy requiring the electric transmission system to be placed, constructed, erected, or built underground, and the governmental agency establishing the policy commits funds for the additional costs of undergrounding;
- (3) Whether any governmental agency or other parties are willing to pay for the additional costs of undergrounding;
- (4) The recommendation of the division of consumer advocacy of the department of commerce and consumer affairs, which shall be based on an evaluation of the factors set forth under this subsection; and
- (5) Any other relevant factors.

(b) In making the determination set forth in subsection (a), for new 138 kilovolt or greater high-voltage transmission systems, the public utilities commission shall evaluate and make specific findings on all of the following factors:

- (1) The amortized cost of construction over the respective usable life of an above-ground versus underground system;
 - (2) The amortized cost of repair over the respective usable life of an above-ground versus underground system;
 - (3) The risk of damage or destruction over the respective usable life of an above-ground versus an underground system;
 - (4) The relative safety and liability risks of an above-ground versus underground system;
 - (5) The electromagnetic field emission exposure from an above-ground versus underground system;
 - (6) The proximity and visibility of an above-ground system to:
 - (A) High density population areas;
 - (B) Conservation and other valuable natural resource and public recreation areas;
 - (C) Areas of special importance to the tourism industry; and
 - (D) Other industries particularly dependent on Hawaii's natural beauty;
 - (7) The length of the system;
 - (8) The breadth and depth of public sentiment with respect to an above-ground versus underground system; and
 - (9) Any other factors that the public utilities commission deems relevant.
- (c) A public utility making an application to the public utilities commission under this section shall clearly and fully state and support its evaluation of each factor set forth in subsection (b). [L 1994, c 133, §2; am L 1997, c 95, §2; am L 1998, c 218, §1]

Cross References

Underground installation of utility facilities along federal-aid highways, see §264-33.5.

" **§269-28 Penalty.** (a) Any public utility violating or neglecting or failing in any particular to conform to or comply with this chapter or any lawful order of the public utilities commission shall be subject to a civil penalty not to exceed \$25,000 for each day such violation, neglect, or failure continues, to be assessed by the commission after a hearing in accordance with chapter 91. The commission may order the public utility to cease carrying on its business while the violation, neglect, or failure continues.

(b) Notwithstanding the provisions of subsection (a), any public utility violating or neglecting or failing in any particular to conform to or comply with any rule or order of the commission setting forth safety requirements applicable to the transmission of gas shall be subject to a civil penalty not to exceed \$25,000 for each day that the violation, neglect, or failure continues; provided that the maximum penalty for related violations arising out of the same act, omission, or occurrence shall not exceed \$500,000.

(c) Notwithstanding the provisions of subsection (a), any person acting in the capacity of or engaging in the business of a public utility in the State without having a certificate of public convenience and necessity or other authority previously obtained under and in compliance with this chapter and the rules promulgated thereunder may be subject to a civil penalty not to exceed \$5,000 for each such offense, and, in the case of a continuing violation, \$5,000 for each day that uncertified activity continues.

(d) Upon written application filed within fifteen days after service of an order imposing a civil penalty pursuant to this section, the commission may remit or mitigate such penalty upon such terms as it deems proper.

(e) If any civil penalty imposed pursuant to this section is not paid within such period as the commission may direct, the attorney general shall institute a civil action for recovery of same in circuit court. [L 1913, c 89, §15; RL 1925, §2205; am L 1933, c 169, §3; RL 1935, §7963; RL 1945, §4724; RL 1955, §104-25; HRS §269-28; am L 1977, c 7, §1; am L 1988, c 254, §1; am L 1989, c 242, §1; am L 1991, c 57, §11]

Case Notes

State-federal jurisdiction over interisland air transportation. 235 F. Supp. 990; 47 H. 1, 87, 384 P.2d 536.

" **§269-29 Perjury.** Any person who wilfully and knowingly makes under oath any false statement in connection with any investigation by or proceeding before the public utilities commission shall be guilty of perjury and, upon conviction, shall be subject to the penalty prescribed by law for the offense. [L 1913, c 89, §16; RL 1925, §2206; RL 1935, §7964; RL 1945, §4725; RL 1955, §104-26; HRS §269-29]

Cross References

Perjury and related offenses, see §§710-1060 to 1068.

" **§269-30 Finances; public utility fee.** (a) Sections 607-5 to 607-9 shall apply to the public utilities commission and each commissioner, as well as to the supreme and circuit courts, and all costs and fees paid or collected pursuant to this section shall be deposited with the director of finance to the credit of the public utilities commission special fund established under section 269-33.

(b) There also shall be paid to the public utilities commission in each of the months of July and December of each year, by each public utility subject to investigation by the public utilities commission, a fee equal to one-fourth of one per cent of the gross income from the public utility's business during the preceding year, or the sum of \$30, whichever is greater. This fee shall be deposited with the director of finance to the credit of the public utilities commission special fund.

(c) Each public utility paying a fee under subsection (b) may impose a surcharge to recover the amount paid above one-eighth of one per cent of gross income. The surcharge imposed shall not be subject to the notice, hearing, and approval requirements of this chapter; provided that the surcharge may be imposed by the utility only after thirty days' notice to the public utilities commission. Unless ordered by the public utilities commission, the surcharge shall be imposed only until the conclusion of the public utility's next rate case; provided that the surcharge shall be subject to refund with interest at the public utility's authorized rate of return on rate base if the utility collects more money from the surcharge than actually paid due to the increase in the fee to one-fourth of one per cent.

(d) Notwithstanding any provision of this chapter to the contrary, the public utilities commission may, upon the filing of a petition by a public utility, credit a public utility for amounts paid under subsection (b) toward amounts the public utility owes in one call center fees under section 269E-6(f).

(e) Amounts received in the form of a cable surcharge by an electric utility company acting on behalf of a certified cable company under section 269-134 shall not be deemed gross income for that electric utility company for purposes of this section; provided that any amounts retained by that electric utility company for collection or other costs shall not be included in this exemption. [L 1913, c 89, §17; am L 1913, c 137, §1; RL 1925, §2207; am L 1933, c 169, §5; RL 1935, §7965; RL 1945, §4726; am L 1949, c 180, §1; am L 1955, c 206, §2; RL 1955, §104-27; am L 1959, c 265, §14; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §269-30; am L 1973, c 149, §1(d); am L

1981, c 167, §3; am L 1994, c 226, §3; am L 2004, c 141, §§2, 7; am L 2005, c 22, §51; am L 2009, c 72, §3; am L 2012, c 165, §6]

Note

The source note to this section is supplemented by "am L 2005, c 22, §51; am L 2009, c 72, §3".

Cross References

Modification of fees, see §92-28.

Attorney General Opinions

Nonutility revenues must be included in gross revenues for computation of fees. Att. Gen. Op. 61-100.

Case Notes

Interisland fees. 32 H. 127.

Interest on unpaid amounts. 33 H. 890, aff'd 96 F.2d 412, aff'd 305 U.S. 306.

Companies subject to fees under this section are determined by §269-1, the definition of public utility. 56 H. 115, 530 P.2d 742.

Cited: 34 H. 269, 270, aff'd 105 F.2d 286; 43 H. 216.

" **§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 operated 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 this chapter or any applicable franchise, charter, decision, order, rule, or other law 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. Notwithstanding the above, the public utilities commission and the consumer advocate shall at all times consider the ownership structure and interests of an electric cooperative in determining the scope and need for any

regulatory oversight or requirements over such electric cooperative. To the extent any other provision of this chapter or any franchise, charter, law, decision, order, or rule is contrary to or otherwise conflicts with this section in any manner, the provisions of this section shall govern and apply.

(c) For purposes of this chapter, an "electric cooperative" is a cooperative association or entity that is:

- (1) Owned by its members;
- (2) Formed pursuant to chapter 421C;
- (3) Operated on a not-for-profit basis;
- (4) Authorized pursuant to a legislatively granted franchise or other legislative authority to manufacture, sell, furnish, and supply electric light, electric current, or electric power to its members or a designated service area; and
- (5) Governed by a board of directors who are members of the electric cooperative and who are democratically elected by members of the electric cooperative pursuant to applicable bylaws. [L 1913, c 89, §20; RL 1925, §2210; RL 1935, pt of §7966; RL 1945, pt of §4727; RL 1955, §104-28; HRS §269-31; am L 2013, c 57, §2]

Case Notes

Commission has powers re federally regulated utilities. 305 U.S. 306.

Shipping board has sole and exclusive jurisdiction to regulate rates of a common carrier by water in interstate commerce. 24 H. 136.

Hawaiian Telephone, only Interstate Commerce Commission may fix rates. 26 H. 508.

" **[\$269-32] Injury to public utility property.** Any person who injures or destroys, through want of proper care, any necessary or useful facility, equipment or property of any public utility shall be liable to the public utility for all damages sustained thereby. The measure of damages to the facility, equipment or property injured or destroyed shall be the cost to repair or replace the property injured or destroyed including direct and allocated costs for labor, materials, supervision, supplies, tools, taxes, transportation, administrative and general expense and other indirect or overhead expenses, less credit, if any, for salvage. The specifying of the measure of damages for the facility, equipment or property shall not preclude the recovery of such other

damages occasioned thereby as may be authorized by law. [L 1977, c 203, §1]

" **§269-33 Public utilities commission special fund.** (a) There is established in the state treasury a public utilities commission special fund to be administered by the public utilities commission. The proceeds of the fund shall be used by the public utilities commission and the division of consumer advocacy of the department of commerce and consumer affairs for all expenses incurred in the administration of chapters 269, 271, 271G, 269E, and 486J, and for costs incurred by the department of commerce and consumer affairs to fulfill the department's limited oversight and administrative support functions; provided that the expenditures of the public utilities commission shall be in accordance with legislative appropriations. On a quarterly basis, an amount not exceeding thirty per cent of the proceeds remaining in the fund after the deduction for central service expenses, pursuant to section 36-27, shall be allocated by the public utilities commission to the division of consumer advocacy and deposited in the compliance resolution fund established pursuant to section 26-9(o); provided that all moneys allocated by the public utilities commission from the fund to the division of consumer advocacy shall be in accordance with legislative appropriations.

(b) All moneys appropriated to, received, and collected by the public utilities commission that are not otherwise pledged, obligated, or required by law to be placed in any other special fund or expended for any other purpose shall be deposited into the public utilities commission special fund including, but not limited to, all moneys received and collected by the public utilities commission pursuant to sections 92-21, 269-28, 269-30, 271-27, 271-36, 271G-19, 269E-6, 269E-14, and 607-5.

(c) The public utilities commission shall submit an update as part of its annual report submitted pursuant to section 269-5 detailing all funds received and all moneys disbursed out of the fund.

(d) All moneys in excess of \$1,000,000 remaining on balance in the public utilities commission special fund on June 30 of each year shall lapse to the credit of the state general fund. [L 1994, c 226, §1; am L 1998, c 11, §17; am L 1999, c 129, §6; am L 2004, c 141, §§3, 7; am L 2005, c 22, §51; am L 2009, c 72, §3; am L 2013, c 24, §2; am L 2014, c 108, §7]

" **[\$269-34] Obligations of telecommunications carriers.** In accordance with conditions and guidelines established by the commission to facilitate the introduction of competition into the State's telecommunications marketplace, each

telecommunications carrier, upon bona fide request, shall provide services or information services, on reasonable terms and conditions, to an entity seeking to provide intrastate telecommunications, including:

- (1) Interconnection to the telecommunications carrier's telecommunications facilities at any technically feasible and economically reasonable point within the telecommunications carrier's network so that the networks are fully interoperable;
- (2) The current interstate tariff used as the access rate until the commission can adopt a new intrastate local service interconnection tariff pursuant to section 269-37;
- (3) Nondiscriminatory and equal access to any telecommunications carrier's telecommunications facilities, functions, and the information necessary to the transmission and routing of any telecommunications service and the interoperability of both carriers' networks;
- (4) Nondiscriminatory access among all telecommunications carriers, where technically feasible and economically reasonable, and where safety or the provision of existing electrical service is not at risk, to the poles, ducts, conduits, and rights-of-way owned or controlled by the telecommunications carrier, or the commission shall authorize access to electric utilities' poles as provided by the joint pole agreement, commission tariffs, rules, orders, or Federal Communications Commission rules and regulations;
- (5) Nondiscriminatory access to the network functions of the telecommunications carrier's telecommunications network, that shall be offered on an unbundled, competitively neutral, and cost-based basis;
- (6) Telecommunications services and network functions without unreasonable restrictions on the resale or sharing of those services and functions; and
- (7) Nondiscriminatory access of customers to the telecommunications carrier of their choice without the need to dial additional digits or access codes, where technically feasible. The commission shall determine the equitable distribution of costs among the authorized telecommunications carriers that will use such access and shall establish rules to ensure such access.

Where possible, telecommunications carriers shall enter into negotiations to agree on the provision of services or

information services without requiring intervention by the commission; provided that any such agreement shall be subject to review by the commission to ensure compliance with the requirements of this section. [L 1995, c 225, pt of §2]

Cross References

Retail intrastate services; fully competitive, see §269-16.85.

" **[\$269-35] Universal service.** The commission shall preserve and advance universal service by:

- (1) Maintaining affordable, just, and reasonable rates for basic residential service;
- (2) Assisting individuals or entities who cannot afford the cost of or otherwise require assistance in obtaining or maintaining their basic service or equipment as determined by the commission; and
- (3) Ensuring that consumers are given the information necessary to make informed choices among the alternative telecommunications providers and services. [L 1995, c 225, pt of §2]

" **[\$269-36] Telecommunications number portability.** The commission shall ensure that telecommunications number portability within an exchange is available, upon request, as soon as technically feasible and economically reasonable. An impartial entity shall administer telecommunications numbering and make the numbers available on an equitable basis. [L 1995, c 225, pt of §2]

" **[\$269-37] Compensation agreements.** The commission shall ensure that telecommunications carriers are compensated on a fair basis for termination of telecommunications services on each other's networks, taking into account, among other things, reasonable and necessary costs to each telecommunications carrier of providing the services in question. Telecommunications carriers may negotiate compensation arrangements, that may include "bill and keep", mutual and equal compensation, or any other reasonable division of revenues pending tariff access rates to be set by the commission. Upon failure of the negotiations, the commission shall determine the proper methodology and amount of compensation. [L 1995, c 225, pt of §2]

Case Notes

The statutes and rules cited by defendants did not require dismissal of the billing disputes on the basis of primary jurisdiction. Sections 269-6 and 269-16 and this section did not place the action in the instant case within the "special competence" of the public utilities commission (PUC); the statutes provided the PUC with authority to take certain actions as an administrative agency, but the authority granted to the PUC over certain types of billing disputes is shared with the courts. 131 H. 257, 318 P.3d 97 (2013).

" **[\$269-38] Regulatory flexibility for effectively competitive services.** The commission may allow telecommunications carriers to have pricing flexibility for services that the commission finds are effectively competitive; provided that the rates for:

- (1) Basic telephone service and for services that are not effectively competitive are cost-based and remain just, reasonable, and nondiscriminatory; and
- (2) Universal service is preserved and advanced. [L 1995, c 225, pt of §2]

" **[\$269-39] Cross-subsidies.** (a) The commission shall ensure that noncompetitive services shall not cross-subsidize competitive services. Cross-subsidization shall be deemed to have occurred:

- (1) If any competitive service is priced below the total service long-run incremental cost of providing the service as determined by the commission in subsection (b); or
- (2) If competitive services, taken as a whole, fail to cover their direct and allocated joint and common costs as determined by the commission.

(b) The commission shall determine the methodology and frequency with which providers calculate total service long-run incremental cost and fully allocated joint and common costs. The total service long-run incremental cost of a service shall include an imputation of an amount equal to the contribution that the telecommunications carrier receives from noncompetitive inputs used by alternative providers in providing the same or equivalent service. [L 1995, c 225, pt of §2]

" **[\$269-40] Access to advanced services.** The commission shall ensure that all consumers are provided with nondiscriminatory, reasonable, and equitable access to high quality telecommunications network facilities and capabilities that provide subscribers with sufficient network capacity to access information services that provide a combination of voice,

data, image, and video, and that are available at just, reasonable, and nondiscriminatory rates that are based on reasonably identifiable costs of providing the services. [L 1995, c 225, pt of §2]

" **[\$269-41] Universal service program; establishment; purpose; principles.** There is established the universal service program. The purpose of this program is to:

- (1) Maintain affordable, just, and reasonable rates for basic residential telecommunications service, as defined by the commission;
- (2) Assist customers located in the areas of the State that have high costs of essential telecommunications service, low-income customers, and customers with disabilities, in obtaining and maintaining access to a basic set of essential telecommunications services as determined by the commission. The commission may expand or otherwise modify relevant programs, such as the lifeline program under section 269-16.5;
- (3) Ensure that consumers in all communities are provided with access, at reasonably comparable rates, to all telecommunications services which are used by a majority of consumers located in metropolitan areas of the State. The commission shall provide for a reasonable transition period to support the statewide deployment of these advanced telecommunications services, including, but not limited to, the use of strategic community access points in public facilities such as education, library, and health care facilities;
- (4) Ensure that consumers are given the information necessary to make informed choices among the alternative telecommunications carriers and services; and
- (5) Promote affordable access throughout the State to enhanced government information and services, including education, health care, public safety, and other government services.

The commission shall administer the universal service program, including the establishment of criteria by which the purposes of the program are met. [L 1995, c 225, pt of §2]

" **§269-42 Universal service program; contributions.** (a) There is established outside of the state treasury a special fund to be known as the universal service fund to be administered by the commission to implement the policies and goals of universal service. The fund shall consist of

contributions from the sources identified in subsections (e) and (f). Interest earned from the balance of the fund shall become a part of the fund. The commission shall adopt rules regarding the distribution of moneys from the fund including reimbursements to carriers for providing reduced rates to low-income, elderly, residents of underserved or rural areas, or other subscribers, as authorized by the commission.

(b) The commission may allow distribution of funds directly to customers based upon a need criteria established by the commission.

(c) A telecommunications carrier or other person contributing to the universal service program may establish a surcharge which is clearly identified and explained on customers' bills to collect from customers contributions required under this section.

(d) Telecommunications carriers may compete to provide services to underserved areas using funds from the universal service program. For the purposes of this section, "underserved areas" means those areas in the State that lack or have very limited access to high capacity, advanced telecommunications networks and information services, including access to cable television.

(e) The commission shall require all telecommunications carriers to contribute to the universal service program. The commission may require a person other than a telecommunications carrier to contribute to the universal service program if, after notice and opportunity for hearing, the commission determines that the person is offering a commercial service in the State that directly benefits from the telecommunications infrastructure, and that directly competes with a telecommunications service provided in the State for which a contribution is required under this subsection.

(f) The commission shall designate the method by which the contributions under subsection (e) shall be calculated and collected. The commission shall consider basing contributions solely on the gross operating revenues from the retail provision of intrastate telecommunications services offered by the telecommunications carriers subject to the contribution. [L 1995, c 225, pt of §2; am L 1999, c 135, §3]

" **[\$269-43] Carriers of last resort.** (a) The commission may define and designate local exchange service areas where the commission has determined that providing universal service funds to a single provider will be the most appropriate way to ensure service for these areas.

(b) The commission shall determine the level of service that is appropriate for each designated local exchange service

area and shall invite telecommunications providers to bid for a level of service that is appropriate. The successful bidder shall be designated the carrier of last resort for the designated local exchange service area for a period of time and upon conditions set by the commission. In determining the successful bidder, the commission shall take into consideration the level of service to be provided, the investment commitment, and the length of the agreement, in addition to the other qualifications of the bidder.

(c) The universal service fund shall also provide service drops and basic service at discounted rates to public institutions, as stated in section 269-41.

(d) The commission shall adopt rules pursuant to chapter 91 to carry out the provisions of this section. [L 1995, c 225, pt of §2]

" **[\$269-44] Solar water heater system standards.** Not later than July 1, 2009, or as soon as reasonably practicable, the public utilities commission shall adopt or establish by rule, tariff, or order, standards for solar water heater systems to include, but not be limited to, specifications for the performance, materials, components, durability, longevity, proper sizing, installation, and quality to promote the objectives of section 269-124. [L 2008, c 204, §3]

Cross References

Systems required for new single-family residential construction, see §196-6.5.

" **[\$269-45] Gas utility companies; renewable energy; reporting requirements.** (a) Each gas utility company shall submit an annual report to the public utilities commission on or before March 31 of each year that shall include but not be limited to the following information:

- (1) The percentage of total feedstock used to produce natural gas, biogas, biofuels, or biofeedstocks for use in the State that is comprised of petroleum feedstock;
- (2) The percentage of total feedstock used to produce natural gas, biogas, biofuels, or biofeedstocks for use by the gas utility in the State that is comprised of non-petroleum feedstock;
- (3) The energy quantity in therms of natural gas, biogas, or gallons of biofuels, or biofeedstocks produced from petroleum feedstock for use by the gas utility within the State; and

- (4) The energy quantity in therms of natural gas, biogas, or gallons of biofuels, or biofeedstocks produced from non-petroleum feedstock energy for use by the gas utility in the State.

Within thirty days of receipt of the report, the public utilities commission shall submit the information required by paragraphs (1) and (2) to the legislature. Due to the proprietary nature of the information required by paragraphs (3) and (4), that information shall be held in confidence by the commission; provided that any information obtained by the commission under this section, including confidential information, shall be made available to the department of business, economic development, and tourism or its authorized representative, which shall safeguard the confidentiality of that information. The department, with its own staff and other support staff with relevant expertise and experience, shall use the information obtained under this section to effectuate the purposes and intent of chapters 125C, 196, and other relevant laws. The first report required by this section shall be for the year 2011 and shall be submitted no later than March 31, 2012.

(b) For the purposes of this section:

"Department" means the department of business, economic development, and tourism.

"Feedstock" means a material that is converted, consumed, or blended to produce an end use product.

"Non-petroleum feedstock" includes but is not limited to plant and animal fats and oils, algae and algae products, other organic material, organic waste, municipal solid waste, waste water, or sewage.

"Total feedstock" means petroleum and non-petroleum feedstock combined. [L 2010, c 30, §2]

"[PART II.] CONSUMER ADVOCATE

§269-51 Consumer advocate; executive director of the division of consumer advocacy. The executive director of the division of consumer advocacy shall be the consumer advocate in hearings before the public utilities commission. The consumer advocate shall represent, protect, and advance the interests of all consumers, including small businesses, of utility services.

The responsibility of the consumer advocate for advocating the interests of the consumer of utility services shall be separate and distinct from the responsibilities of the public utilities commission and those assistants employed by the commission. The consumer advocate shall have full rights to participate as a party in interest in all proceedings before the

public utilities commission. [L 1976, c 124, pt of §1; am L 1982, c 204, §6; am L 1986, c 52, §1; am L 2014, c 108, §8]

" **§269-52 Division of consumer advocacy; personnel.** There shall be a division of consumer advocacy within the department of commerce and consumer affairs. The director of commerce and consumer affairs may appoint an executive director, who shall be exempt from chapter 76, and fix the executive director's compensation. The executive director shall supervise and control the operations and personnel of the division. The executive director shall be responsible for the performance of the duties imposed upon the division and shall be the consumer advocate as specified in section 269-51. The executive director may employ engineers, accountants, investigators, clerks, and stenographers as may be necessary for the performance of the consumer advocate's functions, in accordance with chapter 76; provided that:

- (1) The executive director may employ up to ten utility analysts exempt from chapter 76; and
- (2) Each analyst shall possess at least the minimum qualifications required of comparable experts in the relevant industry. [L 1976, c 124, pt of §1; am L 1982, c 69, §2 and c 204, §7; am L 1994, c 191, §1; am L 1995, c 196, §1; am L 2000, c 253, §150; am L 2007, c 183, §3; am L 2014, c 108, §9]

Note

Restructuring of division, etc. L 2007, c 183, §§1, 2.

" **§269-53 Legal counsel.** The executive director of the division of consumer advocacy may appoint or retain, without regard to chapter 76, attorneys to provide legal services for the division of consumer advocacy. Nothing in this section precludes the director of commerce and consumer affairs or the executive director of the division of consumer advocacy from requesting and securing legal services from the attorney general and the department of the attorney general. [L 1976, c 124, pt of §1; gen ch 1985; am L 1986, c 52, §2; am L 2000, c 272, §2 and c 253, §150; am L 2014, c 108, §10]

" **§269-54 General powers; duties.** (a) The consumer advocate shall have the authority expressly conferred by or reasonably implied from the provisions of this part.

(b) The consumer advocate may:

- (1) Adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this part.

- (2) Conduct investigations to secure information useful in the lawful administration of any provision of this part.
- (3) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of the consumer in the public utilities field.
- (4) Study the operation of laws affecting all consumers, including small businesses, of utility services and recommend to the governor and the legislature new laws and amendments of laws in the consumers' interest in the public utilities field.
- (5) Organize and hold conferences on problems affecting consumers of utility services.
- (6) Perform such other acts as may be incidental to the exercise of the functions, powers, and duties set forth in this section.
- (7) Represent the interests of consumers of utility services before any state or federal agency or instrumentality having jurisdiction over matters which affect those interests.

(c) The consumer advocate shall consider the long-term benefits of renewable resources in the consumer advocate's role as consumer advocate.

(d) Whenever it appears to the consumer advocate that: (1) any public utility has violated or failed to comply with any provision of this part or of any state or federal law; (2) any public utility has failed to comply with any rule, regulation, or other requirement of the public utilities commission or of any other state or federal agency; (3) any public utility has failed to comply with any provision of its charter or franchise; (4) changes, additions, extensions, or repairs to the plant or service of any public utility are necessary to meet the reasonable convenience or necessity of the public; or (5) the rates, fares, classifications, charges, or rules of any public utility are unreasonable or unreasonably discriminatory, the consumer advocate may institute proceedings for appropriate relief before the public utilities commission. The consumer advocate may appeal any final decision and order in any proceeding to which the consumer advocate is a party in the manner provided by law.

(e) The consumer advocate may file with the commission and serve on any public utility a request in writing to furnish any information reasonably relevant to any matter or proceeding before the commission or reasonably required by the consumer advocate to perform the duties hereunder. Any such request shall set forth with reasonable specificity the purpose for

which the information is requested and shall designate with reasonable specificity the information desired. The public utility shall comply with such request within the time limit set forth by the consumer advocate unless within ten days following service it requests a hearing on the matter before the public utilities commission and states its reasons therefor. If a hearing is requested, the public utilities commission shall proceed to hold the hearing and make its determination on the request within thirty days after the same is filed. The consumer advocate or the public utility may appeal the decision of the commission on any such request, subject to chapter 602, in the manner provided for civil appeals from the circuit courts. Subject to the foregoing, such requests may ask the public utility to:

- (1) Furnish any information with which the consumer advocate may require concerning the condition, operations, practices, or services of the public utility;
- (2) Produce and permit the consumer advocate or the consumer advocate's representative to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any designated tangible thing which is in the possession, custody, or control of the public utility; or
- (3) Permit entry upon land or other property in the possession or control of the utility for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object thereon. [L 1976, c 124, pt of §1; gen ch 1985; am L 1986, c 52, §3; am L 2003, c 132, §1; am L 2004, c 202, §29; am L 2006, c 94, §1; am L 2010, c 109, §1]

" **§269-55 Handling of complaints.** The consumer advocate shall counsel utility customers in the handling of consumer complaints before the public utilities commission. The public utilities commission shall provide a central clearinghouse of information by collecting and compiling all consumer complaints and inquiries concerning public utilities. [L 1976, c 124, pt of §1; am L 2000, c 217, §1]

"[PART III. OTHER PROVISIONS]

[§269-71] **Meter tampering.** Any person who, without permission or authorization from a utility tampers with, damages, destroys, removes, connects, causes to connect,

disconnects, or causes to be disconnected or bypassed any wire, cable, conductor, gas pipe, billing or collection equipment, or device on any meter, line, conduit, property, or facilities of a utility for the purpose of using unmetered services, in addition to any other penalty authorized by law, shall be liable to the utility for treble the amount of the value of the utility services used and the damages or loss of any equipment, property, or facilities of a utility. [L 1982, c 94, §1]

Cross References

Criminal tampering of a utility, see §§708-825 to 826.
Theft of utility services, see §708-839.5.

"PART IV. GAS PIPELINE SYSTEMS--REPEALED

§§269-81 to 269-84 REPEALED. L 2009, c 25, §1.

"[PART V. RENEWABLE PORTFOLIO STANDARDS]

§269-91 [Definitions.] For the purposes of this [part]:

"Biofuels" means liquid or gaseous fuels produced from organic sources such as biomass crops, agricultural residues and oil crops, such as palm oil, canola oil, soybean oil, waste cooking oil, grease, and food wastes, animal residues and wastes, and sewage and landfill wastes.

"Cost-effective" means the ability to produce or purchase electric energy or firm capacity, or both, from renewable energy resources at or below avoided costs or as the commission otherwise determines to be just and reasonable consistent with the methodology set by the public utilities commission in accordance with section 269-27.2.

"Electric utility company" means a public utility as defined under section 269-1, for the production, conveyance, transmission, delivery, or furnishing of power.

"Renewable electrical energy" means:

- (1) Electrical energy generated using renewable energy as the source, and beginning January 1, 2015, includes customer-sited, grid-connected renewable energy generation; and
- (2) Electrical energy savings brought about by:
 - (A) The use of renewable displacement or off-set technologies, including solar water heating, sea-water air-conditioning district cooling systems, solar air-conditioning, and customer-sited, grid-connected renewable energy systems; provided that, beginning January 1, 2015, electrical

- energy savings shall not include customer-sited, grid-connected renewable-energy systems; or
- (B) The use of energy efficiency technologies, including heat pump water heating, ice storage, ratepayer-funded energy efficiency programs, and use of rejected heat from co-generation and combined heat and power systems, excluding fossil-fueled qualifying facilities that sell electricity to electric utility companies and central station power projects.

"Renewable energy" means energy generated or produced using the following sources:

- (1) Wind;
- (2) The sun;
- (3) Falling water;
- (4) Biogas, including landfill and sewage-based digester gas;
- (5) Geothermal;
- (6) Ocean water, currents, and waves, including ocean thermal energy conversion;
- (7) Biomass, including biomass crops, agricultural and animal residues and wastes, and municipal solid waste and other solid waste;
- (8) Biofuels; and
- (9) Hydrogen produced from renewable energy sources.

"Renewable portfolio standard" means the percentage of electrical energy sales that is represented by renewable electrical energy. [L 2001, c 272, §2; am L 2004, c 95, §4; am L 2006, c 162, §4; am L 2009, c 50, §3 and c 155, §2; am L 2011, c 10, §1]

" **§269-92 Renewable portfolio standards.** (a) Each electric utility company that sells electricity for consumption in the State shall establish a renewable portfolio standard of:

- (1) Ten per cent of its net electricity sales by December 31, 2010;
- (2) Fifteen per cent of its net electricity sales by December 31, 2015;
- (3) Thirty per cent of its net electricity sales by December 31, 2020;
- (4) Forty per cent of its net electricity sales by December 31, 2030;
- (5) Seventy per cent of its net electricity sales by December 31, 2040; and
- (6) One hundred per cent of its net electricity sales by December 31, 2045.

(b) The public utilities commission may establish standards for each utility that prescribe what portion of the renewable portfolio standards shall be met by specific types of renewable energy resources; provided that:

- (1) Prior to January 1, 2015, at least fifty per cent of the renewable portfolio standards shall be met by electrical energy generated using renewable energy as the source, and after December 31, 2014, the entire renewable portfolio standard shall be met by electrical generation from renewable energy sources;
- (2) Beginning January 1, 2015, electrical energy savings shall not count toward renewable energy portfolio standards;
- (3) Where electrical energy is generated or displaced by a combination of renewable and nonrenewable means, the proportion attributable to the renewable means shall be credited as renewable energy; and
- (4) Where fossil and renewable fuels are co-fired in the same generating unit, the unit shall be considered to generate renewable electrical energy (electricity) in direct proportion to the percentage of the total heat input value represented by the heat input value of the renewable fuels.

(c) If the public utilities commission determines that an electric utility company failed to meet the renewable portfolio standard, after a hearing in accordance with chapter 91, the utility shall be subject to penalties to be established by the public utilities commission; provided that if the commission determines that the electric utility company is unable to meet the renewable portfolio standards due to reasons beyond the reasonable control of an electric utility, as set forth in subsection (d), the commission, in its discretion, may waive in whole or in part any otherwise applicable penalties.

(d) Events or circumstances that are outside of an electric utility company's reasonable control may include, to the extent the event or circumstance could not be reasonably foreseen and ameliorated:

- (1) Weather-related damage;
- (2) Natural disasters;
- (3) Mechanical or resource failure;
- (4) Failure of renewable electrical energy producers to meet contractual obligations to the electric utility company;
- (5) Labor strikes or lockouts;
- (6) Actions of governmental authorities that adversely affect the generation, transmission, or distribution

- of renewable electrical energy under contract to an electric utility company;
- (7) Inability to acquire sufficient renewable electrical energy due to lapsing of tax credits related to renewable energy development;
 - (8) Inability to obtain permits or land use approvals for renewable electrical energy projects;
 - (9) Inability to acquire sufficient cost-effective renewable electrical energy;
 - (10) Inability to acquire sufficient renewable electrical energy to meet the renewable portfolio standard goals beyond 2030 in a manner that is beneficial to Hawaii's economy in relation to comparable fossil fuel resources;
 - (11) Substantial limitations, restrictions, or prohibitions on utility renewable electrical energy projects; and
 - (12) Other events and circumstances of a similar nature. [L 2001, c 272, §3; am L 2004, c 95, §5; am L 2006, c 162, §5; am L 2009, c 155, §3; am L 2015, c 97, §2]

" **§269-93 Achieving portfolio standard.** (a) An electric utility company and its electric utility affiliates may aggregate their renewable portfolios to achieve the renewable portfolio standard.

(b) If an electric utility company and its electric utility affiliates aggregate their renewable portfolios to achieve the renewable portfolio standard, the public utilities commission may distribute, apportion, or allocate the costs and expenses of all or any portion of the respective renewable portfolios among the electric utility company, its electric utility affiliates, and their respective ratepayers, as is reasonable under the circumstances.

(c) An electric utility company may recover, through an automatic rate adjustment clause, the electric utility company's revenue requirement resulting from the distribution, apportionment, or allocation of the costs and expenses of the renewable portfolios of the electric utility company and its electric utility affiliates.

(d) To provide for timely recovery of the revenue requirement under subsection (c), the commission may establish a separate automatic rate adjustment clause, or approve the use of a previously approved automatic rate adjustment clause, without a rate case filing. The use of the automatic rate adjustment clause to recover the revenue requirement shall be allowed to continue until the revenue requirement is incorporated in rates in the respective electric utility company's rate case. [L 2001, c 272, §4; am L 2011, c 69, §4]

" **[§269-94 Waivers, extensions, and incentives.]** Any electric utility company not meeting the renewable portfolio standard shall report to the public utilities commission within ninety days following the goal dates established in section [269-92], and provide an explanation for not meeting the renewable portfolio standard. The public utilities commission shall have the option to either grant a waiver from the renewable portfolio standard or an extension for meeting the prescribed standard.

The public utilities commission may provide incentives to encourage electric utility companies to exceed their renewable portfolio standards or to meet their renewable portfolio standards ahead of time, or both. [L 2001, c 272, §5]

" **§269-95 Renewable portfolio standards study.** The public utilities commission shall:

- (1) By December 31, 2007, develop and implement a utility ratemaking structure, which may include performance-based ratemaking, to provide incentives that encourage Hawaii's electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the renewable portfolio standards established in section 269-92, while allowing for deviation from the standards in the event that the standards cannot be met in a cost-effective manner or as a result of events or circumstances, such as described in section 269-92(d), beyond the control of the electric utility company that could not have been reasonably anticipated or ameliorated;
- (2) Gather, review, and analyze empirical data to:
 - (A) Determine the extent to which any proposed utility ratemaking structure would impact electric utility companies' profit margins; and
 - (B) Ensure that the electric utility companies' opportunity to earn a fair rate of return is not diminished;
- (3) Use funds from the public utilities special fund to contract with the Hawaii natural energy institute of the University of Hawaii to conduct independent studies to be reviewed by a panel of experts from entities such as the United States Department of Energy, National Renewable Energy Laboratory, Electric Power Research Institute, Hawaii electric utility companies, environmental groups, and other similar institutions with the required expertise. These

studies shall include findings and recommendations regarding:

- (A) The capability of Hawaii's electric utility companies to achieve renewable portfolio standards in a cost-effective manner and shall assess factors such as:
 - (i) The impact on consumer rates;
 - (ii) Utility system reliability and stability;
 - (iii) Costs and availability of appropriate renewable energy resources and technologies, including the impact of renewable portfolio standards, if any, on the energy prices offered by renewable energy developers;
 - (iv) Permitting approvals;
 - (v) Effects on the economy;
 - (vi) Balance of trade, culture, community, environment, land, and water;
 - (vii) Climate change policies;
 - (viii) Demographics;
 - (ix) Cost of fossil fuel volatility; and
 - (x) Other factors deemed appropriate by the commission; and
 - (B) Projected renewable portfolio standards to be set five and ten years beyond the then current standards;
- (4) Evaluate the renewable portfolio standards every five years, beginning in 2013, and may revise the standards based on the best information available at the time to determine if the standards established by section 269-92 remain effective and achievable; and
 - (5) Report its findings and revisions to the renewable portfolio standards, based on its own studies and other information, to the legislature no later than twenty days before the convening of the regular session of 2014, and every five years thereafter. [L 2004, c 95, pt of §2; am L 2006, c 162, §6; am L 2009, c 155, §4; am L 2015, c 97, §3]

Cross References

State support for achieving renewable portfolio standards, see §196-41.

" **[\$269-96] Energy-efficiency portfolio standards.** (a) The public utilities commission shall establish energy-efficiency portfolio standards that will maximize cost-effective energy-efficiency programs and technologies.

(b) The energy-efficiency portfolio standards shall be designed to achieve four thousand three hundred gigawatt hours of electricity use reductions statewide by 2030; provided that the commission shall establish interim goals for electricity use reduction to be achieved by 2015, 2020, and 2025 and may also adjust the 2030 standard by rule or order to maximize cost-effective energy-efficiency programs and technologies.

(c) The commission may establish incentives and penalties based on performance in achieving the energy-efficiency portfolio standards by rule or order.

(d) The public utilities commission shall evaluate the energy-efficiency portfolio standard every five years, beginning in 2013, and may revise the standard, based on the best information available at the time, to determine if the energy-efficiency portfolio standard established by this section remains effective and achievable. The commission shall report its findings and revisions to the energy-efficiency portfolio standard, based on its own studies and other information, to the legislature no later than twenty days before the convening of the regular session of 2014, and every five years thereafter.

(e) Beginning in 2015, electric energy savings brought about by the use of renewable displacement or off-set technologies, including solar water heating and sea-water air-conditioning district cooling systems, shall count toward this standard. [L 2009, c 155, pt of §11]

"[PART VI.] NET ENERGY METERING

§269-101 Definitions. As used in this part:

"Eligible customer-generator" means a metered residential or commercial customer, including a government entity, of an electric utility who owns and operates a solar, wind turbine, biomass, or hydroelectric energy generating facility, or a hybrid system consisting of two or more of these facilities, that is:

- (1) Located on the customer's premises;
- (2) Operated in parallel with the utility's transmission and distribution facilities;
- (3) In conformance with the utility's interconnection requirements; and
- (4) Intended primarily to offset part or all of the customer's own electrical requirements.

"Net energy metering" means measuring the difference between the electricity supplied through the electric grid and the electricity generated by an eligible customer-generator and fed back to the electric grid over a monthly billing period; provided that:

- (1) Net energy metering shall be accomplished using a single meter capable of registering the flow of electricity in two directions;
- (2) An additional meter or meters to monitor the flow of electricity in each direction may be installed with the consent of the customer-generator, at the expense of the electric utility, and the additional metering shall be used only to provide the information necessary to accurately bill or credit the customer-generator, or to collect solar, wind turbine, biomass, or hydroelectric energy generating system performance information for research purposes;
- (3) If the existing electrical meter of an eligible customer-generator is not capable of measuring the flow of electricity in two directions, the electric utility shall be responsible for all expenses involved in purchasing and installing a meter that is able to measure electricity flow in two directions;
- (4) If an additional meter or meters are installed, the net energy metering calculation shall yield a result identical to that of a single meter; and
- (5) An eligible customer-generator who already owns an existing solar, wind turbine, biomass, or hydroelectric energy generating facility, or a hybrid system consisting of two or more of these facilities, is eligible to receive net energy metering service in accordance with this part. [L 2001, c 272, pt of §6; am L 2004, c 99, §1; am L 2005, c 104, §2]

" **[§269-101.5] Maximum capacity of eligible customer-generator.** The eligible customer-generator shall have a capacity of not more than fifty kilowatts; provided that the public utilities commission may increase the maximum allowable capacity that eligible customer-generators may have to an amount greater than fifty kilowatts by rule or order. [L 2005, c 104, §1]

" **§269-102 Standard contract or tariff; rate structure.** (a) Every electric utility shall develop a standard contract or tariff providing for net energy metering and shall make this contract available to eligible customer-generators, upon request, on a first-come-first-served basis until the time that the total rated generating capacity produced by eligible customer-generators equals .5 per cent of the electric utility's system peak demand; provided that the public utilities commission may modify, by rule or order, the total rated generating capacity produced by eligible customer-generators;

provided further that the public utilities commission shall ensure that a percentage of the total rated generating capacity produced by eligible customer-generators shall be reserved for electricity produced by eligible residential or small commercial customer-generators. The public utilities commission may define, by rule or order, the maximum capacity for eligible residential or small commercial customer-generators. Notwithstanding the generating capacity requirements of this subsection, the public utilities commission may evaluate, on an island-by-island basis, the applicability of the generating capacity requirements of this subsection and, in its discretion, may exempt an island or a utility grid system from the generating capacity requirements.

(b) Each net energy metering contract or tariff shall be identical, with respect to rate structure, to the contract or tariff to which the same customer would be assigned if the customer was not an eligible customer-generator. The charges for all retail rate components for eligible customer-generators shall be based exclusively on the eligible customer-generator's net kilowatt-hour consumption over a monthly billing period. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or other charge that would increase an eligible customer-generator's costs beyond those of other customers in the rate class to which the eligible customer-generator would otherwise be assigned are contrary to the intent of this section, and shall not form a part of net energy metering contracts or tariffs.

(c) The public utilities commission may amend the rate structure or standard contract or tariff by rule or order. [L 2001, c 272, pt of §6; am L 2005, c 104, §3; am L 2008, c 150, §2]

" **§269-103 Generating capacity.** On an annual basis, beginning in 2003, every electric utility shall make available to the public utilities commission information on the total rated generating capacity produced by eligible customer-generators that are customers of that utility in the utility's service area. The public utilities commission shall develop a process for making the information required by this section available to electric utilities, and for using that information to determine when, pursuant to section 269-104, an electric utility is not obligated to provide net energy metering to additional customer-generators in its service area. [L 2001, c 272, pt of §6]

" **§269-104 Additional customer-generators.** Notwithstanding section 269-102, an electric utility is not obligated to provide

net energy metering to additional customer-generators in its service area when the combined total peak generating capacity of all eligible customer-generators served by all the electric utilities in that service area furnishing net energy metering to eligible customer-generators equals .5 per cent of the system peak demand of those electric utilities; provided that the public utilities commission may increase, by rule or order, the allowable percentage of the electric utility's system peak demand produced from eligible customer-generators in the electric utility's service area, whereupon the electric utility will be obligated to provide net energy metering to additional eligible customer-generators in that service area up to the increased percentage amount. [L 2001, c 272, pt of §6; am L 2005, c 104, §4]

" **§269-105 Calculation.** The net energy metering calculation shall be made by measuring the difference between the electricity supplied to the eligible customer-generator and:

- (1) The electricity generated by the eligible customer-generator and fed back to the electric grid over a monthly billing period; and
- (2) Any unused credits for excess electricity from the eligible customer-generator carried over from previous months since the last twelve-month reconciliation period. [L 2001, c 272, pt of §6; am L 2005, c 104, §5]

" **§269-106 Billing periods; twelve-month reconciliation.**

(a) Billing of net energy metering customers shall be on a monthly basis; provided that the last monthly bill for each twelve-month period shall reconcile for that twelve-month period the net electricity provided by the electric utility with:

- (1) The electricity generated by the eligible customer-generator and fed back to the electric grid over the monthly billing period; and
- (2) Any unused credits for excess electricity from the eligible customer-generator carried over from prior months since the last twelve-month reconciliation period.

(b) Credits for excess electricity from the eligible customer-generator that remain unused after each twelve-month reconciliation period may not be carried over to the next twelve-month period. [L 2001, c 272, pt of §6; am L 2005, c 104, §6]

" **§269-107 Net electricity consumers.** At the end of each monthly billing period, where the electricity supplied during the period by the electric utility exceeds:

- (1) The electricity generated by the eligible customer-generator during that same period; and
- (2) Any unused credits for excess electricity from the eligible customer-generator carried over from prior months since the last twelve-month reconciliation period,

the eligible customer-generator is a net electricity consumer and the electric utility shall be owed compensation for the eligible customer-generator's net kilowatt-hour consumption over that same period. The compensation owed for the eligible customer-generator's net monthly kilowatt-hour consumption shall be calculated at the retail rate of the rate class the customer is normally assigned to. [L 2001, c 272, pt of §6; am L 2005, c 104, §7]

" **§269-108 Net electricity producers; excess electricity credits and credit carry over.** At the end of each monthly billing period, where the electricity generated by the eligible customer-generator during the month exceeds the electricity supplied by the electric utility during that same period, the eligible customer-generator is a net electricity producer and the electric utility shall retain any excess kilowatt-hours generated during the prior monthly billing period; provided that the excess electricity generated by the customer-generator, if any, in each monthly billing period shall be carried over to the next month as a monetary value to the credit of the eligible customer-generator, which credit may accumulate and be used to offset the compensation owed the electric utility for the eligible customer-generator's net kilowatt-hour consumption for succeeding months within each twelve-month period; provided further that the electric utility shall reconcile the eligible customer-generator's electricity production and consumption for each twelve-month period as set forth in section 269-106. The eligible customer-generator shall not be owed any compensation for excess kilowatt-hours unless the electric utility enters into a purchase agreement with the eligible customer-generator for those excess kilowatt-hours. [L 2001, c 272, pt of §6; am L 2005, c 104, §8]

" **§269-109 Net electricity consumption or production information.** The electric utility shall provide every eligible customer-generator with net electricity consumption or production information with each regular monthly bill, which shall include:

- (1) The current monetary balance owed the electric utility for net electricity consumed;
- (2) The net electricity produced since the end of the last monthly billing period; and
- (3) An accounting of the credits for excess electricity produced by the eligible customer-generator since the last twelve-month reconciliation period that shows credits applied to the monthly billing period and the balance of unused credits, if any. [L 2001, c 272, pt of §6; am L 2005, c 104, §9]

" **§269-110 Termination by eligible customer-generators.** If an eligible customer-generator terminates the customer relationship with the electric utility, the electric utility shall reconcile the eligible customer-generator's consumption and production of electricity, including any unused credits for excess electricity from the eligible customer-generator carried over from prior months, for the period following the last twelve-month reconciliation period to the date of termination of the relationship, according to the requirements set forth in this part. [L 2001, c 272, pt of §6; am L 2005, c 104, §10]

" **§269-111 Safety and performance standards.** (a) A solar, wind turbine, biomass, or hydroelectric energy generating system, or a hybrid system consisting of two or more of these facilities, used by an eligible customer-generator shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as the Underwriters Laboratories and, where applicable, rules of the public utilities commission regarding safety and reliability.

(b) For systems of ten kilowatts or less, an eligible customer-generator whose solar, wind turbine, biomass, or hydroelectric energy generating system, or whose hybrid system consisting of two or more of these facilities, meets the standards and rules under subsection (a) shall not be required to install additional controls, perform or pay for additional tests, or purchase additional liability insurance.

(c) For eligible customer-generator systems of greater than ten kilowatts, the commission, either through decision and order, by tariff adoption, or by rule, shall:

- (1) Set forth safety, performance, and reliability standards and requirements; and
- (2) Establish the qualifications for exemption from a requirement to install additional controls, perform or pay for additional tests, or purchase additional

liability insurance. [L 2001, c 272, pt of §6; am L 2004, c 99, §2; am L 2005, c 69, §2]

"PART VII. PUBLIC BENEFITS FEE

Note

Part heading amended by L 2008, c 118, pt of §2.

§269-121 Public benefits fee authorization. (a) The public utilities commission, by order or rule, may require that all or a portion of the moneys collected by Hawaii's electric utilities from its ratepayers through a demand-side management surcharge be transferred to a third-party administrator contracted by the public utilities commission. The moneys transferred shall be known as the public benefits fee.

(b) The public benefits fee shall be used to support clean energy technology, demand response technology, and energy use reduction, and demand-side management infrastructure, programs, and services, subject to the review and approval of the public utilities commission. These moneys shall not be available to meet any current or past general obligations of the State; provided that the State may participate in any clean energy technology, demand response technology, or energy use reduction, and demand-side management infrastructure, programs, and services on the same basis as any other electric consumer.

For the purpose of this subsection, "clean energy technology" means any commercially available technology that enables the State to meet the renewable portfolio standards, established pursuant to section 269-92, or the energy-efficiency portfolio standards, established pursuant to section 269-96, and approved by the public utilities commission by rule or order.

(c) Nothing in this section shall create or be construed to cause the public benefits fee to be considered state or public moneys subject to appropriation by the legislature or be required to be deposited into the state treasury. [L 2006, c 162, pt of §1; am L 2008, c 118, pt of §2; am L 2013, c 211, §5 and c 260, §3]

" §269-122 Public benefits fee administrator; establishment.

(a) The public utilities commission may contract with a third-party administrator, to operate and manage any programs established under section 269-121. The administrator shall not be deemed to be a "governmental body" as defined in section 103D-104; provided that all moneys transferred to the third-party administrator shall be comprised solely of public [benefits] fees collected pursuant to section 269-121 or from

funds provided by the federal government or by private funding sources. The administrator shall not expend more than ten per cent of the collected public benefits fees in any fiscal year, or other reasonable percentage determined by the public utilities commission, for administration of the programs established under section 269-121.

(b) The public benefits fee administrator shall be subject to regulation by the public utilities commission under any provision applicable to a public utility in sections 269-7, 269-8, 269-8.2, 269-8.5, 269-9, 269-10, 269-13, 269-15, 269-19.5, and 269-28, and shall report to the public utilities commission on a regular basis. Notwithstanding any other provision of law to the contrary, the public benefits fee administrator shall not be an electric public utility or an electric public utility affiliate. [L 2006, c 162, pt of §1; am L 2008, c 118, pt of §2; am L 2009, c 155, §16]

" **§269-123 Requirements for the public benefits fee administrator.**

(a) Any public benefits fee administrator contracted pursuant to section 269-122 shall satisfy the qualification requirements established by the public utilities commission by rule or order. These requirements may include experience and expertise in:

- (1) Energy-efficient and renewable energy technologies and methods; and
- (2) Identifying, developing, administering, and implementing demand-side management and energy-efficiency programs.

(b) The public benefits fee administrator's duties and responsibilities shall be established by the public utilities commission by rule or order, and may include:

- (1) Identifying, developing, administering, promoting, implementing, and evaluating programs, methods, and technologies that support energy-efficiency and demand-side management programs;
- (2) Encouraging the continuance or improvement of efficiencies made in the production, delivery, and use of energy-efficiency and demand-side management programs and services;
- (3) Using the energy-efficiency expertise and capabilities that have developed or may develop in the State and consulting with state agency experts;
- (4) Promoting program initiatives, incentives, and market strategies that address the needs of persons facing the most significant barriers to participation;
- (5) Promoting coordinated program delivery, including coordination with electric public utilities regarding

- the delivery of low-income home energy assistance, other demand-side management or energy-efficiency programs, and any utility programs;
- (6) Consideration of innovative approaches to delivering demand-side management and energy-efficiency services, including strategies to encourage third-party financing and customer contributions to the cost of demand-side management and energy-efficiency services; and
 - (7) Submitting, to the public utilities commission for review and approval, a multi-year budget and planning cycle that promotes program improvement, program stability, and maturation of programs and delivery resources. [L 2006, c 162, pt of §1; am L 2008, c 118, pt of §2]

" **§269-124 Transitioning from utility demand-side management programs to the public benefits fee.** If the public utilities commission establishes a public benefits fee pursuant to section 269-121, the public utilities commission shall:

- (1) Develop a transition plan that ensures that:
 - (A) Utility demand-side management programs are continued, to the extent practicable, until the transition date; and
 - (B) The public benefits fee administrator will be able to provide demand-side management and energy-efficiency services on the transition date;
- (2) Encourage programs that allow all retail electricity customers, including state and county agencies, regardless of the retail electricity or gas provider, to have an opportunity to participate in and benefit from a comprehensive set of cost-effective demand-side management and energy-efficiency programs and initiatives designed to overcome barriers to participation;
- (3) Encourage programs, measures, and delivery mechanisms that reasonably reflect current and projected utility integrated resource planning, market conditions, technological options, and environmental benefits;
- (4) Facilitate the delivery of these programs as rapidly as possible, taking into consideration the need for these services and cost-effective delivery mechanisms;
- (5) Consider the unique geographic location of the State and the high costs of energy in developing programs that will promote technologies to advance energy efficiency and use of renewable energy and permit the

State to take advantage of activities undertaken in other states, including the opportunity for multi-state programs;

- (6) Require the public benefits fee administrator contracted by the public utilities commission under section 269-122 to deliver programs in an effective, efficient, timely, and competent manner and to meet standards that are consistent with state policy and public utilities commission policy; and
- (7) Before January 2, 2008, and every three years thereafter, require verification by an independent auditor of the reported energy and capacity savings and incremental renewable energy production savings associated with the programs delivered by the public benefits fee administrator contracted by the public utilities commission to deliver energy-efficiency and demand-side management programs under section 269-121. [L 2006, c 162, pt of §1; am L 2008, c 118, pt of §2]

" **§269-125 On-bill financing for energy efficiency and renewable energy.** (a) The public utilities commission shall investigate an on-bill financing program that would allow an electric utility company customer to purchase or otherwise acquire a renewable energy system or energy-efficient device, as determined by the public utilities commission, by providing for billing and payment of such a system or device through an assessment on the electric utility company customer's electricity bill.

(b) In investigating an on-bill financing program, the public utilities commission may consider:

- (1) The costs and benefits associated with the establishment and administration of the program;
- (2) The ability of the program to effectively provide life cycle cost savings to participating electric utility company customers;
- (3) The ability of the program to make renewable energy and energy efficiency more accessible to the rental market and other underserved markets;
- (4) Methods to structure the program to ensure that any public benefits fee funds are spent cost-effectively and in compliance with applicable statutes;
- (5) The use of non-ratepayer funds or private capital to provide financing for renewable energy systems or energy-efficient devices acquired through the program;
- (6) Reasonable penalties, which may include fines and disconnection of utility services, for nonpayment of on-bill financing costs;

- (7) The ability of an electric utility company to recover costs incurred due to the program; and
- (8) Other issues the public utilities commission deems appropriate.

(c) If on-bill financing is determined by the public utilities commission to be viable, the public utilities commission may implement an on-bill financing program by decision and order or by rules pursuant to chapter 91.

(d) Amounts collected from electric utility customers by electric utilities for the repayment of on-bill obligations shall not be considered revenue of the electric utilities and accordingly, shall not be subject to state or county taxes, including the general excise tax under chapter 237, the public service company tax under chapter 239, the public utility fee under section 269-30, and the public utility franchise tax under chapter 240.

(e) The act of serving as an agent to bill and to collect the repayment of on-bill obligations shall not cause any electric utility to be subject to the laws that regulate financial institutions, escrow depositories, or collection agencies. An electric utility shall not be responsible for lending, underwriting, and credit determinations.

(f) As used in this section:

"On-bill obligation" means any and all costs resulting from the acquisition and installation of renewable energy, energy efficiency, or energy conservation systems approved by the public utilities commission for repayment through an on-bill program.

"On-bill program" means any program approved by the public utilities commission that allows for the payment or repayment by an electric utility customer for the acquisition and installation of renewable energy, energy efficiency, or energy conservation systems as part of the electric utility customer's electric utility bill. [L 2011, c 204, §2; am L 2015, c 201, §2]

"[PART VIII.] INTERISLAND TRANSMISSION SYSTEM

[§269-131] Definitions. As used in this part:

"Cable acquisition cost" means the electric utility company's costs, including reasonable transaction costs, to acquire a high-voltage electric transmission cable system pursuant to a turnkey cable contract or a cable purchase contract.

"Cable company" means any person or persons, company, corporation, or entity that is selected through a request for proposals, or other process approved by the commission, to be a certified cable company applicant.

"Certified cable company" means any person or persons, company, corporation, or entity who owns or controls a high-voltage electric transmission cable system and who receives a certificate of public convenience and necessity from the commission pursuant to section 269-132.

"Commercial operations" means the period after the high-voltage electric transmission cable system:

- (1) Passes acceptance tests approved by the commission, as determined by a qualified independent engineer approved by the commission; and
- (2) Meets other criteria the commission determines to be reasonable.

"Commercial operations date" means the date upon which the high-voltage electric transmission cable system begins commercial operations, as determined by the commission.

"Commission" means the public utilities commission.

"Cost-effective" has the same meaning as in section 269-91.

"Electric utility company" means a public utility as defined in section 269-1, for the production, conveyance, transmission, delivery, or furnishing of electric power.

"Electric utility system" means the electric system owned and operated by an electric utility company, including any non-utility owned facilities that are interconnected to the system, consisting of power plants, transmission and distribution lines, and related equipment for the production and delivery of electric power to the public.

"Energy resources coordinator" or "coordinator" means the director of business, economic development, and tourism.

"High-voltage electric transmission cable system" means one hundred twenty kilovolts or greater of alternating current or direct current transmission cables constructed undersea, including connected transmission cables or lines installed on land that connect the electric utility systems on two or more islands or allow for the transmission of power from one or more energy generation facilities to the electric utility system located on another island of the State; alternating current substation or alternating current-direct current converter station; on-island transmission infrastructure if required; fiber optic communication cables; and other appurtenant facilities.

"On-island transmission infrastructure" means the modifications and additions to the existing alternating current transmission grid on an island and other electric utility system modifications needed to reliably connect a high-voltage electric transmission cable system to an electric utility system, and to reliably accept power transmitted via the high-voltage electric

transmission cable system connecting two or more islands of the State's electric utility systems.

"Power purchase agreement" means an agreement between an electric utility company and the developer of an energy generation facility to sell the power generated by the facility to the electric utility company.

"Project-on-project financing risk" means the risk involved when mutually dependent projects, whose risk of completion, and therefore, financing, are dependent on each other.

"Renewable electricity" means electrical energy generated using renewable energy as the source.

"Renewable energy" has the same meaning as in section 269-91.

"Renewable energy generation facility" means a facility generating electrical energy using renewable energy as the primary source.

"Renewable portfolio standard" has the same meaning as in section 269-91.

"Request for proposals" means a request for proposals issued pursuant to a competitive process authorized, reviewed, and approved by the commission, and developed and conducted by the electric utility company or companies to which the capacity of a high-voltage electric transmission cable system will be made available, with input and assistance from the state energy resources coordinator, to select a cable company. [L 2012, c 165, pt of §2]

" **[§269-132] Certification.** (a) Prior to installing a high-voltage electric transmission cable system, a cable company shall be selected through a request for proposals, or other process approved by the commission. The selected cable company shall not commence commercial operations of the high-voltage electric transmission cable system until it is issued a certificate of public convenience and necessity by the commission pursuant to section 269-7.5. A certified cable company shall be subject to regulation by the commission and defined as a "public utility" under section 269-1, notwithstanding any law to the contrary.

(b) The electric utility company and the energy resources coordinator, or the energy resources coordinator's designee, shall develop the request for proposals, and the energy resources coordinator or the energy resources coordinator's designee shall be a member of the selection committee that will review and evaluate the proposals. The electric utility company shall suspend or terminate the request for proposals at the discretion of the commission.

(c) Notwithstanding any provisions in section 269-7.5 to the contrary:

- (1) The commission shall approve, disapprove, or approve subject to certain conditions, an application for a certificate of public convenience and necessity for a high-voltage electric transmission cable system, and shall issue a final order within one hundred eighty days after the application is filed, provided that the commission may extend the timeline as necessary;
- (2) In determining whether the cable company is financially fit, the commission may allow for the use of commercially reasonable non-recourse project financing for the high-voltage electric transmission cable system;
- (3) In determining whether the proposed transmission capacity service is or will be required by the present or future public convenience and necessity, the commission shall determine whether the high-voltage electric transmission cable system would be a cost-effective means of:
 - (A) Interconnecting two or more electric utility systems;
 - (B) Helping one or more electric utility companies meet the applicable renewable portfolio standard; or
 - (C) Achieving other considerations the commission may deem appropriate;
- (4) If the primary source or sources of the renewable electricity that will be transmitted to an electric utility company or companies using the high-voltage electric transmission cable system will be provided pursuant to a power purchase agreement or agreements between the electric utility company or companies and an owner or owners of a new renewable energy generation facility or facilities, in reviewing and approving the application for a certificate of public convenience and necessity, the commission shall, among other factors, take into consideration:
 - (A) The status of the power purchase agreement or agreements;
 - (B) The extent to which the project-on-project financing risk of the high-voltage electric transmission cable system and the associated renewable energy generation facilities is materially reduced through agreements between the certified cable company and the owner or owners of the renewable energy generation facilities

holding the power purchase agreement or agreements, or through common ownership arrangements; and

- (C) The extent to which the certified cable company assumes financial responsibility for the high-voltage electric transmission cable system until both the cable system and the new generation facility or facilities have achieved commercial operations;
- (5) In the certification process, the commission shall review and determine ratemaking principles appropriate and applicable to the high-voltage electric transmission cable system during commercial operations. The ratemaking principles shall be used in determining the certified cable company's revenue requirement that is used to determine its transmission capacity charges, and may be used to fix the capital investment costs for the high-voltage electric transmission cable system upon which the certified cable company will be allowed to earn an authorized rate of return and the operating costs that may be included in the certified cable company's revenue requirement. Any applicable land costs shall be included in the determination of the certified cable company's revenue requirement;
- (6) In determining the authorized rate of return that will apply to a certified cable company, the commission may consider the risks assumed by the certified cable company related to or resulting from the planning, financing, construction, and operation of the high-voltage electric transmission cable system, including other factors deemed relevant and appropriate by the commission, such as the terms and conditions of the transmission tariff as may be approved by the commission; and
- (7) Prior to approving the application for a certificate of public convenience and necessity, the commission shall hold a public hearing on each island to be connected by the high-voltage electric transmission cable system to obtain input from the affected communities about the high-voltage electric transmission cable system. [L 2012, c 165, pt of §2]

" **[§269-133] Transmission tariff.** The commission shall, by order, approve, disapprove, or approve subject to certain conditions, the tariff of the certified cable company pursuant to which the certified cable company shall make the capacity of

its high-voltage electric transmission cable system available to the electric utility company or companies. The tariff shall be consistent with the tariff provisions provided in the request for proposals, unless otherwise ordered by the commission. The tariff shall specify the terms and conditions under which the certified cable company will be entitled to receive revenues collected through the cable surcharge, established pursuant to section 269-134. The certified cable company may submit its proposed tariff for approval prior to the expected commercial operations date, and the commission shall take final action on the proposed tariff within one hundred twenty days after submittal of the proposed tariff with supporting documentation as may be required by the commission; provided that the commission may extend the timeline as necessary. [L 2012, c 165, pt of §2]

" **§269-134 Cable surcharge.** (a) The commission shall establish a cable surcharge to allow recovery of the high-voltage electric transmission cable system costs designated for recovery according to the ratemaking principles pursuant to section 269-132.

(b) Pursuant to the transmission tariff, the commission shall, by order, designate the electric utility company or companies to which the capacity of the high-voltage electric transmission cable system shall be made available as the agent of the certified cable company to collect the cable surcharge approved by the commission. The electric utility company or companies collecting the cable surcharge for the benefit of the certified cable company shall have no right, title, or interest in the moneys so collected. The commission shall approve a fee, to be collected by the electric utility company or companies concurrently with the cable surcharge, for acting as the collection agent for the certified cable company.

(c) Notwithstanding any requirements to the contrary, a high-voltage electric transmission cable system may be deemed "used and useful for public utility purposes" upon commencing commercial operations, subject to the commission's determination and approval. [L 2012, c 165, pt of §2; am L 2014, c 95, §3]

" **[\$269-135] Recovery of electric utility company costs.**

(a) An electric utility company may recover, through an automatic rate adjustment clause, its revenue requirement resulting from the capital costs that it prudently incurs for on-island transmission infrastructure; provided that the commission has approved the utility's commitment of capital expenditure costs for the project.

(b) To provide for timely recovery of the revenue requirement, the commission shall establish a separate automatic rate adjustment clause for that purpose, or modify an existing automatic rate adjustment clause. The use of the automatic rate adjustment clause to recover the revenue requirement shall be allowed to continue until the revenue requirement is incorporated in rates in an electric utility company's rate case.

(c) The electric utility company's revenue requirement shall include:

- (1) The commission-approved rate of return, as set in the electric utility company's last rate case, on the utility's net investment in the high-voltage electric transmission cable system from the acquisition date of the high-voltage electric transmission cable system, and in the on-island transmission infrastructure from the date the on-island transmission infrastructure is completed and available for service;
- (2) Depreciation; and
- (3) Revenue taxes and other relevant costs as approved by the commission.

(d) The electric utility company's net investment includes costs incurred by the electric utility for planning, permitting, and constructing the on-island transmission infrastructure, including an allowance for funds used during construction where the utility finances the planning, permitting, and construction costs, less offsets such as accumulated depreciation and associated unamortized deferred income taxes.

(e) The on-island transmission infrastructure shall be available for service before the commercial operations date of the high-voltage electric transmission cable system.

Notwithstanding any other provision in this chapter to the contrary, at the time the commission approves the electric utility company's commitment of capital expenditure costs for the project, the commission may either:

- (1) Allow the electric utility company to recover its approved revenue requirement resulting from the capital costs that it prudently incurs for on-island infrastructure at the time that the infrastructure is available for service; or
- (2) Allow the company to continue to accrue an allowance for funds used during construction on such prudently incurred capital costs until the commercial operations date for the high-voltage electric transmission system.

(f) If the electric utility company elects not to complete the on-island transmission infrastructure, and the commission

approves this election, or the electric utility company is precluded from completing construction of the on-island transmission infrastructure, the electric utility company shall be allowed to recover reasonable costs determined by the commission to have been prudently incurred by the electric utility company with respect to the on-island transmission infrastructure. The electric utility company shall be allowed by the commission to recover the reasonable costs through the cable surcharge over a period equal to the period during which the costs were incurred or five years, whichever is greater. [L 2012, c 165, pt of §2]

"PART IX. ELECTRIC RELIABILITY

§269-141 Definitions. As used in this part:

"Advanced grid modernization technology" means equipment, facilities, and associated processes that individually or collectively function to improve the reliability, resiliency, flexibility, and efficiency of the Hawaii electric system. Advanced grid modernization technology provides functional characteristics that improve the operational capability of the Hawaii electric system, including but not limited to automatic restoration of electrical service in response to power disturbance events, greater enabling of participation in utility customer programs, resilient operation against both physical and cyber-based attacks, the ability to satisfy power quality requirements of new technologies and end users, accommodation of energy generation and storage choices, enabling of innovative products and services in electricity markets, improving customer energy-efficiency practices encouraged by the availability of timely energy use information, and optimization of assets and improving the operational efficiency of the Hawaii electric system.

"Ancillary services" means those essential grid support services provided by a facility, or other equipment to support and ensure the reliable generation, transmission, and distribution of electricity, including frequency response and regulation, inertial response, reactive power and voltage control, and operating reserves.

"Commission" means the public utilities commission.

"Electric element" means any plant, line, cable, facility, control system, equipment, or other technology used for the generation, transmission, distribution, storage, regulation, or physical control of electricity.

"Hawaii electric system" means all electric elements located within the State together with all interconnections located within the State that collectively provide for the

generation, transmission, distribution, storage, regulation, or physical control of electricity over a geographic area; provided that this term shall not include any electric element operating without any interconnection to any other electric element located within the State.

"Interconnection" means the physical contact point connecting an electric element to another electric element or group of electric elements that allows for the flow and transfer of electricity between electric elements.

"Interconnection requirement" means a standard or rule, adopted by the commission under this part, concerning the performance levels, processes, practices, equipment, or facilities of any entity either having or seeking to obtain an interconnection to the Hawaii electric system under procedures established pursuant to section 269-145 to ensure the reliable operation of the Hawaii electric system.

"Reliability standard" means an electric reliability requirement or requirements, adopted by the commission under this part, to ensure the reliable design and operation of any or all portions of the Hawaii electric system, including but not limited to ancillary service requirements.

"User, owner, or operator of the Hawaii electric system" means any person, business, organization, or other entity who:

- (1) Owns, controls, operates, or manages plants or facilities for the generation, transmission, or furnishing of electricity; and
- (2) Provides, sells, or transmits all of that electricity, except such electricity as is used in its own internal operations or is used for its own consumption, directly to a public utility for either transmission or distribution to the public;

provided that a user, owner, or operator of the Hawaii electric system shall not be considered a public utility for the purposes of this chapter. [L 2012, c 166, pt of §2; am L 2013, c 34, §3]

" **[§269-142] Reliability standards; interconnection requirements; adoption and development; force and effect.** (a)

The commission may adopt, by rule or order, reliability standards and interconnection requirements. Reliability standards and interconnection requirements adopted by the commission shall apply to any electric utility and any user, owner, or operator of the Hawaii electric system. The commission shall not contract for the performance of the functions under this subsection to any other entity as provided under section 269-147.

(b) The commission may develop reliability standards and interconnection requirements as it determines necessary or upon

recommendation from any entity, including an entity contracted by the commission to serve as the Hawaii electricity reliability administrator provided for under this part, for the continuing reliable design and operation of the Hawaii electric system. Any reliability standard or interconnection requirement developed by the commission shall be adopted by the commission in accordance with subsection (a) in order to be effective. The commission shall not contract for the performance of the functions under this subsection to any other entity as provided under section 269-147.

(c) The commission shall have jurisdiction over matters concerning interconnection requirements and interconnections located in the State between electric utilities, any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system or otherwise applying to connect generation or equipment providing ancillary services to, or operate generation and equipment providing ancillary services in parallel with the Hawaii electric system under processes established in accordance with section 269-145. Nothing in this subsection is intended to give the commission general supervision authority over any user, owner, or operator of the Hawaii electric system or any other person, business, or entity that is not a public utility as defined in section 269-1. [L 2012, c 166, pt of §2]

" **[§269-143] Monitoring.** (a) The commission shall have the authority to monitor the reliability and operation of the Hawaii electric system using any data, files, maps, reports, or any other information concerning any electric utility, any user, owner, or operator of the Hawaii electric system, or any person, business, or entity connecting to the Hawaii electric system, considered by the commission to be necessary for ensuring the reliable operation of the Hawaii electric system. The authority of the commission to monitor information in this section shall include the authority to request, acquire, or otherwise accumulate real-time data on any matter the commission deems necessary to monitor the reliable design and operation of the Hawaii electric system.

(b) The commission shall have the authority to monitor and compel the production of data, files, maps, reports, or any other information concerning any electric utility, any user, owner, or operator of the Hawaii electric system, or other person, business, or entity, considered by the commission to be necessary for exercising jurisdiction over interconnection to the Hawaii electric system, or for administering the process for interconnection to the Hawaii electric system under section 269-145.

(c) Any and all data, files, maps, reports, or any other information the commission requests under subsection (a) or (b) shall be produced in a timely manner. The commission may institute proceedings in accordance with section 269-15 upon a determination that any party for or on behalf of an electric utility, any other user, owner, or operator of the Hawaii electric system, or other person, business, or entity, has refused to provide or is causing unreasonable delay or expense in providing information requested under this section. [L 2012, c 166, pt of §2]

" **[\$269-144] Compliance and enforcement.** (a) The commission shall take all necessary steps, including audits, spot checks, data requests, report requests, and internal monitoring procedures, to ensure that any electric utility, any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system is in compliance with all adopted reliability standards and interconnection requirements, as appropriate.

(b) The commission may impose reasonable penalties on any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system acting in violation of an adopted reliability standard after notice as provided under section 269-12 and an opportunity for a proceeding under section 269-15 has been given.

(c) The commission shall adopt rules pursuant to chapter 91 for the issuance of any penalty under this section. In adopting rules, the commission may make provisions for the Hawaii electric reliability administrator to recommend penalties and enforcement to the commission. [L 2012, c 166, pt of §2]

" **[\$269-145] Grid access; procedures for interconnection; dispute resolution.** (a) Each user, owner, or operator of the Hawaii electric system, or any other person, business, or entity seeking to make an interconnection on the Hawaii electric system shall do so in accordance with procedures to be established by the commission by rule or order.

(b) The commission shall have the authority to make final determinations regarding any dispute between any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system, concerning either an existing interconnection on the Hawaii electric system or an interconnection to the Hawaii electric system created under the processes established by the commission under this section. [L 2012, c 166, pt of §2]

" **§269-145.5 Advanced grid modernization technology; principles.** (a) The commission, in carrying out its responsibilities under this chapter, shall consider the value of improving electrical generation, transmission, and distribution systems and infrastructure within the State through the use of advanced grid modernization technology in order to improve the overall reliability and operational efficiency of the Hawaii electric system.

(b) In advancing the public interest, the commission shall balance technical, economic, environmental, and cultural considerations associated with modernization of the electric grid, based on principles that include but are not limited to:

- (1) Enabling a diverse portfolio of renewable energy resources;
 - (2) Expanding options for customers to manage their energy use;
 - (3) Maximizing interconnection of distributed generation to the State's electric grids on a cost-effective basis at non-discriminatory terms and at just and reasonable rates, while maintaining the reliability of the State's electric grids, and allowing such access and rates through applicable rules, orders, and tariffs as reviewed and approved by the commission;
 - (4) Determining fair compensation for electric grid services and other benefits provided to customers and for electric grid services and other benefits provided by distributed generation customers and other non-utility service providers; and
 - (5) Maintaining or enhancing grid reliability and safety through modernization of the State's electric grids.
- [L 2013, c 34, §2; am L 2014, c 109, §2]

" **[§269-146] Hawaii electricity reliability surcharge; authorization; cost recovery.** (a) The commission may require, by rule or order, that all utilities, persons, businesses, or entities connecting to the Hawaii electric system, or any other user, owner, or operator of any electric element that is a part of an interconnection on the Hawaii electric system shall pay a surcharge that shall be collected by Hawaii's electric utilities. The commission shall not contract or otherwise delegate the ability to create the Hawaii electricity reliability surcharge under this section to any other entity. This surcharge amount shall be known as the Hawaii electricity reliability surcharge.

(b) Amounts collected through the Hawaii electricity reliability surcharge shall be transferred in whole or in part to any entity contracted by the commission to act as the Hawaii

electricity reliability administrator provided for under this part.

(c) The Hawaii electricity reliability surcharge shall be used for the purposes of ensuring the reliable operation of the Hawaii electric system and overseeing grid access on the Hawaii electric system through the activities of the Hawaii electricity reliability administrator contracted under section 269-147; provided that amounts collected under the Hawaii electricity reliability surcharge shall not be available to meet any current or past general obligations of the State.

(d) The commission may allow an electric utility to recover appropriate and reasonable costs under the Hawaii electricity reliability surcharge for any interconnection to the Hawaii electric system, including interconnection studies and other analysis associated with studying the impact or necessary infrastructure and operational requirements needed to reliably interconnect a generator, as well as from electric utility customers through a surcharge or assessment subject to review and approval by the commission under section 269-16.

(e) Nothing in this section shall create or be construed to cause amounts collected through the Hawaii electricity reliability surcharge to be considered state or public moneys subject to appropriation by the legislature or be required to be deposited into the state treasury. [L 2012, c 166, pt of §2]

" **[§269-147] Hawaii electricity reliability administrator; contracting.**

(a) The commission may contract for the performance of its functions under this part with a person, business, or organization, except for a public utility as defined under this chapter, that will serve as the Hawaii electricity reliability administrator provided for under this part; provided that the commission shall not contract for the performance of its functions under sections 269-142(a) and (b) and 269-146.

(b) Any entity contracted by the commission to serve as the Hawaii electricity reliability administrator under this section shall be selected by the commission in accordance with state law, including chapter 103D. The Hawaii electricity reliability administrator, if so enabled by the commission through mutual agreement under the laws of the State of Hawaii, shall hold the powers and rights delegated by the commission under this part for the term of the executed contract; provided that the commission shall retain full authority over the Hawaii electricity reliability administrator and the exclusive authority to carry out functions and responsibilities enumerated under sections 269-142(a) and (b) and 269-146. [L 2012, c 166, pt of §2]

" **[\$269-148] Hawaii electricity reliability administrator; qualifications.** Any entity contracted by the commission to serve as the Hawaii electricity reliability administrator shall:

- (1) Satisfy the qualification requirements established by the commission by rule or order;
- (2) Maintain reasonable and necessary staffing with appropriate skills and expertise to offer prudent and reasonable recommendations on the development of reliability standards and interconnection requirements adopted by the commission under this part, including the technical skills required to properly monitor operations of the Hawaii electric system using information provided under section 269-143; and
- (3) Maintain reasonable and necessary staffing with an appropriate level of independence to fairly and impartially review matters concerning interconnection to the Hawaii electric system under section 269-145, including independence of the entity from any electric utility, any user, owner, or operator of the Hawaii electric system, or any other person, business, or entity connecting to the Hawaii electric system. [L 2012, c 166, pt of §2]

" **[\$269-149] Funding; reporting.** (a) The Hawaii electricity reliability administrator shall use funds collected through the Hawaii electricity reliability surcharge provided for under section 269-146 to carry out its operations, including administrative, technological, or other related requirements for effectively ensuring the reliability of the Hawaii electric system.

(b) The Hawaii electricity reliability administrator shall report to the commission each year on the date of agreement under section 269-147 following the original contracting between the Hawaii electricity reliability administrator and the commission on the status of its operations, financial position, and a projected operational budget for the fiscal year following the date of the report.

(c) The Hawaii electricity reliability administrator shall be subject to regulation by the commission under any provision applicable to a public utility in sections 269-7, 269-8, 269-8.2, 269-8.5, 269-9, 269-10, 269-13, 269-15, 269-19.5, and 269-28. Notwithstanding any other provision of law to the contrary, the Hawaii electricity reliability administrator shall not be an electric public utility or an electric public utility affiliate. [L 2012, c 166, pt of §2]

"[PART X.] GREEN INFRASTRUCTURE BONDS

[\$269-161] Definitions. As used in this part:

"Ancillary agreement" means any bond insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other related bond document or other similar agreement or arrangement entered into in connection with the issuance of bonds that is designed to promote the credit quality and marketability of the bonds or to mitigate the risk of an increase in interest rates.

"Authority" means the Hawaii green infrastructure authority established under section 196-63.

"Bond" or "green infrastructure bond" means any bond, note or other evidence of indebtedness that is issued by the State, acting through the department, under a financing order, the proceeds of which are used directly or indirectly to recover, finance, or refinance financing costs of clean energy technology, demand response technology, and energy use reduction and demand side management infrastructure, programs, and services, and that are secured by or payable from green infrastructure property.

"Bondholder" means any holder or owner of a bond.

"Clean energy technology" means any technology as defined in section 269-121(b).

"Department" means the department of business, economic development, and tourism, or any successor by law.

"Electric utilities" means all electric utilities subject to billing, collecting, and remitting the public benefits fee, or the green infrastructure fee, at the time the financing order becomes final, and any other electric utility designated in the financing order.

"Financing costs" means any of the following:

- (1) Principal and interest payable on bonds;
- (2) Any payment required under an ancillary agreement;
- (3) Any amount required to fund or replenish a reserve account or another account established under any indenture, ancillary agreement, or other financing document relating to the issuance of bonds;
- (4) Any redemption or call premium or cost of redeeming or refunding any existing debt of the department in connection with either the issuance of, or the use of proceeds from, bonds;
- (5) Any costs incurred by the department to modify or amend any indenture, financing agreement, security agreement, or similar agreement or instrument securing any bond or any ancillary agreement;

- (6) Any costs incurred by the department to obtain any consent, release, waiver, or approval from any bondholder or of any party to an ancillary agreement that are necessary to be incurred for the department to issue bonds;
- (7) Any costs related to issuing or servicing bonds or related to obtaining a financing order, including servicing fees and expenses, trustee fees and expenses, legal, accounting, or other professional fees and expenses, administrative fees, placement fees, underwriting fees and discounts, capitalized interest and equity, and rating-agency fees; or loan program administration costs as authorized for recovery under a financing order or orders; or
- (8) Any other similar costs incident to the issuance, administration, or servicing of the bonds that the department finds appropriate.

"Financing order" means an order issued at the request of the department by the public utilities commission under this part that has become final as provided by law, and that authorizes the issuance of bonds and the imposition, adjustment from time to time, and collection of green infrastructure fees.

"Financing party" means:

- (1) Any trustee, collateral agent, or other person acting for the benefit of a bondholder; or
- (2) Any party to an ancillary agreement, the rights and obligations of which relate to or depend upon the existence of green infrastructure property and green infrastructure fees, the enforcement and priority of a security interest in green infrastructure property, the timely collection and payment of green infrastructure fees, or a combination of these factors.

"Green infrastructure bond fund" means the special fund created pursuant to section 196-67.

"Green infrastructure charge" means the on-bill charges as defined in section 196-61.

"Green infrastructure fee" means the nonbypassable fees and charges authorized by section 269-166 and in a financing order authorized under this part to be imposed on and collected from all existing and future customers of electric utilities or any successor.

"Green infrastructure loan program order" means an order issued by the public utilities commission under section 269-171 that establishes the use or other disposition of amounts deposited and held in the Hawaii green infrastructure special fund pursuant to section 196-65.

"Green infrastructure property" means the property, rights, and interests created by the public utilities commission under a financing order, including the right to impose, charge, and collect from electric utility customers the green infrastructure fee that shall be used to pay and secure the payment of bonds and financing costs, including the right to obtain adjustments to the green infrastructure fee, and any revenues, receipts, collections, rights to payment, payments, moneys, claims, or other proceeds arising from the rights and interests created by the public utilities commission under any financing order.

"Green infrastructure special fund" means the special fund created pursuant to section 196-65.

"Successor" means, with respect to any electric utility, another electric utility or other entity that succeeds voluntarily or by operation of law to the rights and obligations of the first electric utility or other entity pursuant to any bankruptcy, reorganization, restructuring, or other insolvency proceedings; any merger, acquisition, or consolidation; or any sale or transfer of assets, regardless of how any of these actions occurred.

"Trustee" means any trustee or fiscal agent appointed under an indenture or certificate of the director executed in connection with the issuance of bonds pursuant to section 39-68. [L 2013, c 211, pt of §3]

" **[\$269-162] Applications to issue bonds and authorize green infrastructure fee.**

(a) In connection with the issuance of bonds, the department may apply to the public utilities commission for one or more financing orders, each of which financing orders authorizes the following:

- (1) The imposition, charging, and collection on behalf of the department of the green infrastructure fee, to become effective upon the issuance of the bonds, and the adjustment of the green infrastructure fee on behalf of the department in accordance with an adjustment mechanism requested by the department under this part in amounts sufficient to pay the principal of and interest on bonds and all related financing costs on a timely basis;
 - (2) The creation of green infrastructure property under the financing order; and
 - (3) The deposit of the net proceeds of the bonds into the green infrastructure special fund.
- (b) The application shall include all of the following:
- (1) The principal amount of the bonds proposed to be issued;

- (2) An estimate of the date each series of bonds is expected to be issued;
- (3) The expected term, not to exceed thirty years, during which term the green infrastructure fee associated with the issuance of each series of bonds is expected to be imposed and collected;
- (4) An estimate of the financing costs associated with the issuance of each series of bonds;
- (5) An estimate of the amount of the green infrastructure fee revenues necessary to pay principal and interest on the bonds and related financing costs as set forth in the application and the calculation for that estimate, which calculation shall take into account the estimated date or dates of issuance and the estimated principal amount of each series of bonds;
- (6) A proposed methodology for allocating the green infrastructure fee among electric utilities and customer classes within each electric utility;
- (7) A description of a proposed formulaic adjustment mechanism for the adjustment of the green infrastructure fee to ensure the timely payment of principal and interest on the bonds and related financing costs; and
- (8) Any other information required by the public utilities commission. [L 2013, c 211, pt of §3]

" **[\$269-163] Green infrastructure financing order.** (a) The public utilities commission shall issue its financing order as final or if a finding in subsection (b) cannot be made, its denial of a financing order, as expeditiously as possible and in any event within ninety days from the date the completed application is submitted.

(b) The public utilities commission may issue a financing order if the public utilities commission finds that the creation of the green infrastructure property to secure the payment of the bonds, including the imposition of the green infrastructure fee, will facilitate the acquisition of low-cost financing, pursuant to an application under section 269-162.

(c) The public utilities commission shall include all of the following in a financing order:

- (1) The maximum amount of bonds to be issued by the State acting through the department under the financing order;
- (2) A description of the green infrastructure property, the creation of which property is authorized by the financing order;

- (3) A description of the financing costs that will be recoverable through green infrastructure fees, including any reserves or overcollateralization amounts required by the department to secure payment of the bonds;
- (4) A description of the methodology to be applied by the public utilities commission, on behalf of the department, for calculating the green infrastructure fee, including the allocation of financing costs among electric utilities and customer classes;
- (5) A description of the formulaic adjustment mechanism to be used by the public utilities commission, on behalf of the department, to adjust the green infrastructure fee in order to ensure that the amount of the green infrastructure fee projected to be collected shall be sufficient to pay the principal and interest on the bonds, and all related financing costs on a timely basis, including the funding or maintenance of any reserves required to be maintained by the department;
- (6) The term of the bonds, as proposed by the department, during which term the green infrastructure fee shall continue to be collected and pledged to pay the bonds, which term shall automatically be extended by the term of any refunding bonds, as approved in a subsequent financing order, issued in such principal amounts as the department may determine to be necessary to refund the bonds that are the subject of the original financing order;
- (7) A requirement that the electric utilities, including any successors, serve as agents to collect the green infrastructure fee and transfer those surcharges to the trustee or other financing party as required by the financing order and any agreements with the department;
- (8) The procedures to be followed by the electric utilities in the event of nonpayment or partial payment of the green infrastructure fee by the electric utilities' customers, which procedures shall be consistent with the public utilities commission approved procedures for nonpayment and partial payment of rates, charges, and fees under the electric utilities' tariffs;
- (9) The distribution of the total amounts collected by the electric utilities for amounts billed to customers for the electric utilities' rates, fees, the green infrastructure fee, other public utilities commission

- approved fees, and for associated taxes, in the event of partial payments of the billed amounts;
- (10) Terms satisfactory to the public utilities commission to ensure that the green infrastructure fee shall be nonbypassable and will be paid by all existing and future customers of an electric utility or any successor; and
 - (11) Any other provision the public utilities commission considers appropriate to ensure the full and timely imposition, charging, collection, and adjustment, pursuant to an approved adjustment mechanism, of the green infrastructure fee described in this subsection.

The electric utilities serving as billing and collecting agents shall be parties to the proceedings in which the financing order or orders are issued.

(d) The public utilities commission, in a financing order, may permit the department flexibility in establishing the terms and conditions for the bonds to accommodate changes in market conditions, including repayment schedules, interest rates, financing costs, collateral requirements, required debt service and other reserves, and the ability of the department, at its option, to effect a series of issuances of bonds and correlated assignments, sales, pledges, or other transfers of green infrastructure property. Any changes made under this section to terms and conditions for the bonds shall be in conformance with the financing order.

(e) At the request of the department, the public utilities commission shall determine, in accordance with the adjustment mechanism set forth in the financing order, the initial green infrastructure fee after the determination of the final terms of each series of bonds, so that the green infrastructure fee shall be final and effective upon issuance of the bonds.

(f) Any adjustment to the green infrastructure fee made by the public utilities commission pursuant to the adjustment mechanism approved in the financing order shall be a ministerial act of the public utilities commission. [L 2013, c 211, pt of §3]

" **[\$269-164] Green infrastructure property.** (a) The green infrastructure property shall be created simultaneously with the issuance of the bonds and shall immediately vest in the department, which shall pledge and create a lien on the property, together with all other money in the green infrastructure bond fund, solely and exclusively in favor of bondholders and financing parties, to secure the payment of bonds, amounts payable to financing parties and bondholders, amounts payable under any ancillary agreement, and other

financing costs as provided in the financing documents executed by the department. Subject to this subsection, the lien and charge on green infrastructure property and all other moneys in the green infrastructure bond fund for the benefit of any financing party shall be governed by section 39-63.

(b) An electric utility shall have no ownership or beneficial interest in nor any claim or right to the green infrastructure fee, green infrastructure property, green infrastructure equipment, or green infrastructure charge other than the obligation to bill and collect the green infrastructure fee and green infrastructure charge as agent for the department or any financing party and remit the collected revenue to the department or such financing party entitled to receive those surcharges in accordance with the financing order. The public utilities commission shall ensure that all reasonable costs incurred by electric utilities to implement the green infrastructure fee may be recovered as part of the electric utility's revenue requirement, including necessary billing system adjustments, costs arising out of the billing and collection of the green infrastructure fee, and any costs for the green infrastructure fee that are not recovered otherwise. The green infrastructure fee or green infrastructure property shall not be considered revenue of any electric utility.

(c) The obligation of any electric utility customer to pay the green infrastructure fee or green infrastructure charge and, notwithstanding subsection (b), the obligation of the electric utility to collect and remit the green infrastructure fee or green infrastructure charge shall not be subject to any setoff, counterclaim, surcharge, or defense by the electric utility or by any electric utility customer, or in connection with a bankruptcy of any electric utility or any electric utility customer. [L 2013, c 211, pt of §3]

" **[\$269-165] Bonds financing order.** (a) A financing order shall remain in effect until the bonds issued under the financing order and all financing costs related to the bonds have been paid in full or defeased by their terms. A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization, or insolvency of any electric utility or any affiliate of the electric utility or the commencement of any judicial or nonjudicial proceeding on the financing order.

(b) Once a financing order has become final as provided by law, the financing order shall become irrevocable. The public utilities commission may not directly or indirectly, except as provided in the adjustment mechanism approved in the financing order, reduce, impair, postpone, rescind, alter, or terminate

the green infrastructure fee authorized in the financing order or impair the green infrastructure property or the collection of the green infrastructure fee so long as any bonds are outstanding or any financing costs remain unpaid.

(c) Under a final financing order, the department shall retain sole discretion to cause bonds to be issued, including the right to defer or postpone such issuance, assignment, sale, or transfer. [L 2013, c 211, pt of §3]

" **[\$269-166] Green infrastructure fee; nonbypassable.** (a) The public utilities commission may create, pursuant to a financing order approved pursuant to section 269-163, a utility-wide nonbypassable surcharge, referred to as the green infrastructure fee, which shall be deposited into the green infrastructure bond fund and be pledged to secure and be applied to the repayment of bonds and related financing costs as described in this part. The green infrastructure fee may be a usage-based surcharge, a flat user fee, or a charge based upon customer revenues as determined by the public utilities commission for each customer class in any financing order.

(b) The green infrastructure fee may be applied to reduce the public benefits fee to be transferred pursuant to section 269-121 if so provided in a financing order. Nothing in this subsection shall affect the right to impose, collect, and adjust from time to time the green infrastructure fee as provided in the financing order and this chapter.

(c) As long as any bonds are outstanding and any financing costs have not been paid in full, the green infrastructure fee authorized under any financing order shall be nonbypassable. Subject to any exceptions provided in a financing order, the green infrastructure fee shall be paid by all existing and future customers of electric utilities or any successors.

(d) The green infrastructure fee shall be collected by the electric utilities or their successors, as collection agents for the department or the financing parties, in full through a surcharge, fee, or charge that is separate and apart from the electric utilities' rates. [L 2013, c 211, pt of §3]

" **[\$269-167] Electric utility successor requirements; default of electric utility.** (a) Any successor to an electric utility subject to a financing order shall be bound by the requirements of this part. The successor shall perform and satisfy all obligations of the electric utility under the financing order, in the same manner and to the same extent as the electric utility, including the obligation to collect and pay the green infrastructure fee to the department or to any financing party as required by a financing order.

(b) The public utilities commission may require, in the financing order creating the green infrastructure fee and green infrastructure property, that, if a default by the electric utility in remittance of the green infrastructure fee collected arising with respect to green infrastructure property occurs, the public utilities commission, upon the application by the department, and without limiting any other remedies available to the department or any financing party by reason of the default, shall order the sequestration and payment to the beneficiaries of the green infrastructure fee collected arising with respect to the green infrastructure property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility. [L 2013, c 211, pt of §3]

" **[\$269-168] Treatment of bonds, fees, and property.** (a) In the furtherance of section 39-65, the ownership, transfer, and pledge of the green infrastructure fee and green infrastructure property and the imposition, charging, collection, and receipt of the green infrastructure fee and green infrastructure charge are exempt from all taxes and surcharges imposed by the State or the counties, including the general excise tax under chapter 237, public service company tax under chapter 239, public utility fee under section 269-30, and public utility franchise tax under chapter 240.

(b) Bonds issued under a financing order shall not be an obligation of any electric utility. The issuance of bonds shall not directly, indirectly, or contingently obligate the electric utility for payment of the principal of or interest on the bonds. [L 2013, c 211, pt of §3]

" **[\$269-169] Green infrastructure property; non-impairment.** (a) In furtherance of section 39-61, the State pledges to and agrees with the bondholders and any financing parties under a financing order that the State will not take or permit any action that impairs the value of green infrastructure property under the financing order, or reduce, alter, or impair the green infrastructure fee that is imposed, charged, collected, or remitted for the benefit of the bondholders and any financing parties, until any principal, interest, and redemption premium in respect of bonds, all financing costs, and all amounts to be paid to a financing party under an ancillary agreement are paid or performed in full or unless adequate provision has been made by law for the protection of bondholders and other financing parties.

(b) In issuing the bonds, the department may include the pledge specified in subsection (a) in the bonds, ancillary

agreements, and documentation related to the issuance and marketing of the bonds. [L 2013, c 211, pt of §3]

" **[\$269-170] Green infrastructure loan program order; application.** (a) The authority shall submit an application to the public utilities commission for the use or other disposition of amounts deposited or held in the green infrastructure special fund pursuant to section 196-65 prior to the allocation, use, expenditure, or other disposition of any such amounts; provided that this subsection shall not apply to the expenditure of amounts deposited or held in the green infrastructure special fund that have been reviewed and approved by the public utilities commission for operational or administrative expenses of the authority pursuant to section 196-64.

(b) An application submitted by the authority to the public utilities commission under this section shall include the following:

- (1) A description of each project, program, financing agreement, or other arrangement for which the authority seeks to allocate, use, expend, or otherwise dispose of amounts deposited or held in the green infrastructure special fund, including:
 - (A) The clean energy technology, demand response technology, and energy use reduction and demand side management infrastructure, programs, and services to be financed;
 - (B) A description of the parties, both direct and incidental, intended to benefit from any financing made in connection with the green infrastructure special fund amounts requested by the authority in an application submitted to the public utilities commission under this section;
 - (C) A description of the loan programs or other arrangements designed, established, identified, agreed to, agreed to in principle, continued, carried over, or otherwise intended to be effectuated for the use of the green infrastructure special fund amounts requested by the authority in an application submitted to the public utilities commission under this section; and
 - (D) Any and all funding or credit sources identified, pledged, dedicated, or otherwise provided to supplement the green infrastructure special fund amounts requested by the authority in an application submitted to the public utilities commission under this section;

- (2) Minimum lending, crediting, or investing criteria in relation to each project, program, financing agreement, or other arrangement described in an application submitted to the public utilities commission under this section;
- (3) A description of the repayment processes, mechanisms, and applicable calculations for each project, program, financing agreement, or other arrangement described in an application submitted to the public utilities commission under this section;
- (4) An explanation of the anticipated impacts and benefits to electric utility ratepayers of any project, program, financing agreement, or other arrangement described under an application submitted by the authority to the public utilities commission under this section; and
- (5) Any other additional information determined to be necessary by the public utilities commission upon the review of an application submitted or resubmitted by the authority under this section. [L 2013, c 211, pt of §3]

" **[\$269-171] Green infrastructure loan program order; issuance.** (a) The public utilities commission may issue a program order authorizing the allocation, use, expenditure, or other disposition of any amounts deposited or held in the green infrastructure special fund upon the submission by the authority to the commission of a completed application, as described in this section. A green infrastructure loan program order issued by the public utilities commission shall include the following, where determined necessary and applicable by the commission:

- (1) An identification and description of each project, program, financing agreement, or other arrangement approved by the public utilities commission for which amounts deposited or held in the green infrastructure special fund may be allocated, used, expended, or otherwise disposed of;
- (2) Minimum criteria for the lending, crediting, or investing of amounts deposited or held in the green infrastructure special fund;
- (3) A description of the repayment processes, mechanisms, and applicable calculations for each project, program, financing agreement, or other arrangement approved by the public utilities commission for which amounts deposited or held in the green infrastructure special fund may be allocated, used, expended, or otherwise disposed of;

- (4) A review of the anticipated impacts and benefits to electric utility ratepayers of any project, program, financing agreement, or other arrangement approved under a green infrastructure loan program order; and
- (5) Any other provision or information determined to be necessary by the public utilities commission.

(b) The public utilities commission shall issue an order under this section as expeditiously as possible upon the receipt from the authority of a completed application submitted pursuant to section 269-170.

(c) The order shall specify the following, including:

- (1) The procedures to be followed by the electric utilities in the event of nonpayment or partial payment of the green infrastructure charge by the electric utilities' customers, which procedures shall be consistent with the public utilities commission's approved procedures for nonpayment and partial payment of rates, charges, and fees under the electric utilities' tariffs; and
- (2) The distribution of the total amounts collected by the electric utilities for amounts billed to customers for the electric utilities' rates, fees, and charges, for the green infrastructure charge, for other fees and charges approved by the public utilities commission, and for associated taxes, in the event of partial payments of the billed amounts.

The electric utilities serving as billing and collecting agents shall be parties to the proceedings in which the order or orders are issued. [L 2013, c 211, pt of §3]

" **[§269-172] Electric utilities; cost recovery; billing agent.** (a) The public utilities commission shall ensure that all reasonable costs incurred by electric utilities to start up and implement the loan program may be recovered as part of the electric utility's revenue requirement, including necessary billing system adjustments, costs arising out of the billing and collection of green infrastructure charges, and any costs for green infrastructure charges that are not recovered via participating customers' green infrastructure bill payments, or otherwise.

(b) The green infrastructure charge shall not be considered revenue of the electric utilities and accordingly, shall not be subject to state or county taxes, including the general excise tax under chapter 237, the public service company tax under chapter 239, the public utility fee under section 269-30, and the public utility franchise tax under chapter 240.

(c) The loan program or the act of serving as an agent to bill and to collect the green infrastructure charge shall not cause any electric utility to be subject to the laws that regulate financial institutions, escrow depositories, or collection agencies. An electric utility shall not be responsible for lending, underwriting, and credit determinations. [L 2013, c 211, pt of §3]

" **[\$269-173] Severability.** If any provision of this part is held to be invalid or is superseded, replaced, repealed, or expires for any reason:

- (1) That occurrence shall not affect any action allowed under this part that is taken prior to that occurrence by the public utilities commission, an electric utility, the department, the authority, a bondholder, or any financing party, and any such action shall remain in full force and effect; and
- (2) The validity and enforceability of the rest of this part shall remain unaffected. [L 2013, c 211, pt of §3]

" **[\$269-174] Miscellaneous.** Neither the department nor a financing party shall be considered an electric utility or person providing electric service by virtue of engaging in the transactions described in this part. [L 2013, c 211, pt of §3]

" **[\$269-175] Revenue bonds; exclusion from debt limit.** Green infrastructure bonds are revenue bonds issued under article VII, section 12, of the Hawaii State Constitution, and chapter 39, part III, as modified by this part, and the department shall ensure that any bonds issued under this part are excluded from the calculation of the State's debt limit pursuant to article VII, section 13, of the Hawaii State Constitution. [L 2013, c 211, pt of §3]

" **[\$269-176] Financing order; adjustments to green infrastructure fee.** The financing order shall include, without limitation, a procedure to require the public utilities commission, in accordance with a formula set out in the financing order and approved by the department, to expeditiously review and approve periodic adjustments to the green infrastructure fee to ensure the payment of the bonds and related financing costs on a timely basis. [L 2013, c 211, pt of §3]