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TO THE HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2017

THURSDAY, FEBRUARY 2, 2017  
8:30 A.M.

TESTIMONY OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF  
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS, TO THE HONORABLE CHRIS LEE, CHAIR, AND MEMBERS OF THE  
COMMITTEE

HOUSE BILL NO. 805 - RELATING TO THE PUBLIC UTILITIES COMMISSION

**DESCRIPTION:**

This measure proposes to establish an intervenor compensation program to provide compensation to intervenors who make substantial contributions to a Public Utilities Commission ("PUC" or "Commission") proceeding that produces a positive result or savings for consumers.

**POSITION:**

The Division of Consumer Advocacy ("Consumer Advocate") has concerns with this bill and offers the following comments for the Committee's consideration.

**COMMENTS:**

The Consumer Advocate acknowledges that intervenors, other participants, and members of the public who take time to comment on ongoing matters before the Commission can possibly make valuable contributions to Commission decisions by providing perspectives that might otherwise not be offered for Commission consideration. The perspective the Consumer Advocate brings to any given docket is focused by design, laid out in statute, and so everyone who offers information and expertise can bring a different perspective to the Commission's attention. The purpose section of this bill mentions intervenor compensation programs in other states and describes the California program in terms of dollars paid out.

The Consumer Advocate has concerns about how this proposed program would be implemented and administered. If such a program is to be implemented, the Consumer Advocate supports the intent to require that there needs to be a showing of substantial contribution resulting in a decision favorable to the interest of consumers. The Consumer Advocate notes that there has been an increase in intervention and participation by parties who are advancing a specific industry's or party's interests, which are important for the Commission to consider, but may not always be in the public interest and consumers' interests. However, further consideration may be necessary to ensure that consumers are getting their money's worth. For instance, the proposal that a substantial contribution may consist of the Commission adopting, in whole or in part, a single factual contention, legal contention, or policy or procedural recommendation bears further scrutiny.

The Consumer Advocate also supports the provision that requires that the program, if approved, should not result in unproductive or unnecessary participation that duplicates the participation of similar interests. There have been recent proceedings, where a number of parties had duplicative interests and compensating each party, rather than encouraging them to pool their resources, would result in inefficient allocation of the funds. In addition, the Consumer Advocate contends that a party should not be rewarded for results that may be attributable to another party, such as the Consumer Advocate. For instance, in any rate proceeding, one of the Consumer Advocate's primary goals is to determine a reasonable revenue requirement and if an intervenor seeks compensation for a reduction in the revenue requirements, which may be attributable, in part, to the Consumer Advocate's efforts, this would require consumers to pay twice for the same result.

Further analysis of other states' intervenor funds may be instructional and the Consumer Advocate defers to the Commission whether it would be able to administer such a program without additional resources to evaluate and parse out the contributions made by parties and what uniquely and substantially contributed to its determinations in order to determine what compensation may be attributable to intervenors.

Thank you for this opportunity to testify.

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

February 2, 2017  
8:30 am

**MEASURE:** H.B. No. 805  
**TITLE:** PUBLIC UTILITIES COMMISSION

Chair Lee and Members of the Committee:

**DESCRIPTION:**

This measure establishes an intervenor compensation program to provide compensation to intervenors who make a substantial contribution to a Public Utilities Commission (“Commission”) proceeding that produces a positive result or savings for consumers. Appropriates funds.

**POSITION:**

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

**COMMENTS:**

The Commission takes no position on the proposed intervenor compensation program.

However, the Commission raises concern regarding the appropriateness of placing the Commission, a quasi-judicial regulatory body, in the position to make subjective determinations regarding whether certain intervenors should receive financial compensation for their contributions to a docket. The Commission also notes that undertaking a detailed review of the reasonableness of intervenor compensation claims, as is proposed by this measure, would likely place a significant administrative burden on the Commission’s limited staff resources.

The Commission also notes that the bill provides that the Commission may require “public utilities to pay into the intervenors compensation special fund *or from the public benefits fee*” (emphasis added). Presently, the public benefits fee is the funding source for two programs – Hawaii Energy, which focuses on energy efficiency initiatives, and the GEMS program. There is concern that the public benefits fee may not be adequate to fund all three programs.

Thank you for the opportunity to testify on this measure.



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COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION  
Rep. Chris Lee, Chair  
Rep. Nicole E. Lowen, Vice Chair

DATE: Thursday, February 2, 2017  
TIME: 8:30am  
PLACE: Conference Room 325

re: HB 805 Relating to PUC (Intervenor Compensation)

**STRONGLY SUPPORT**

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

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 47 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

The California Legislature and the California PUC wanted utility regulatory proceedings to involve a wide-range of groups, including energy stakeholders, and socioeconomically, culturally, and geographically diverse groups. The goal was to reduce barriers to participation.

The California State Auditor released a report on the California Public Utilities Commission (CPUC) intervenor compensation program in 2013. The analysis,<sup>1</sup> and the full report,<sup>2</sup> are available on the web.

“Commission compensation decisions suggest that intervenor participation in commission proceedings can substantially benefit ratepayers. The Commission grant awards totaling \$25.5 million from 2008 to

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<sup>1</sup> <https://www.bsa.ca.gov/reports/summary/2012-118>

<sup>2</sup> <https://www.bsa.ca.gov/pdfs/reports/2012-118.pdf>

2012 for 337 claims submitted. Most of the funding went to 10 major intervenors. California is of course a lot larger than Hawai'i.<sup>3</sup>

State	Population (Million)	Total State Taxes (Billion)
California	39.0	\$138
Hawai'i	1.4	\$6

In Hawai'i the total compensation would be much smaller, but compensation would allow non-profits to find ways of saving ratepayer's money, which is of crucial importance.

California found that two intervenors saved ratepayers nearly a half-billion dollars, and those two groups received compensation just over a million dollars in total. What a bargain!

"For example, one compensation decision indicated that an intervenor's participation in a proceeding to set a utility's rates benefited ratepayers by an estimated \$354 million. The commission's compensation decision indicated that the intervenor raised more than 60 issues throughout the proceeding, and it awarded the intervenor \$784,000 for its work."

"In another case, the compensation decision stated that an intervenor's work on a different utility's rate-setting proceeding resulted in approximately \$130 million in savings to ratepayers, and the commission awarded the intervenor \$586,000 in compensation. This intervenor engaged with two consulting groups whose work resulted in expert findings that contributed to the recognized savings attributable to the intervenor."<sup>4</sup>

By contrast, in Hawai'i, few motions to intervene in rate cases have ever been filed. For electric utility rate cases, for the first time ever, four entities have filed motions to intervene in the current HELCO rate case, where the utility is seeking more than a 6 percent rise in rates.

Mahalo,

Henry Curtis  
Executive Director

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<sup>3</sup> [https://ballotpedia.org/California\\_state\\_budget\\_and\\_finances](https://ballotpedia.org/California_state_budget_and_finances)

<sup>4</sup> Audit, p. 6

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

**H.B. No. 805**

**Relating to the Public Utilities Commission**

Tuesday, February 2, 2017

8:30 am

State Capitol, Conference Room 325

Kevin M. Katsura

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

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

My name is Kevin Katsura and I am testifying on behalf of Hawaiian Electric Company and its subsidiary utilities Maui Electric Company and Hawai'i Electric Light Company in **opposition** to H.B. 805.

Hawaiian Electric Companies oppose this bill which requests the Public Utilities Commission to establish an intervenor funding program to which would essentially subsidize special interests groups that intervene into PUC proceedings.

By statute the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs ("Consumer Advocate") represents, protects, and advances the interests of all consumers of utility services. There is no indication that the Consumer Advocate, as a part of the DCCA, is not fulfilling its statutory duty to represent the interests of consumers, both small and large such that additional entities and the costs associated with their participation are required. This bill would provide funding to intervenors who have interests that may or may not be consistent with the interests of all consumers of electric service. The Companies do not believe it is appropriate for taxpayers or customers of the utility to pay for the involvement of groups whose positions would be outside the scope of the functions of the Consumer Advocate to reflect their position at public expense, subject to the priorities and

limited resources of that office. As an alternative, they may advocate their own position at their own expense.

Proceedings which could have broader impacts (RSWG, PSIP, DER) already well attended by stakeholders including State and County interests as a whole (DBEDT, Counties) and well-funded public interest representatives (Blue Planet, Ulupono). It is unclear whether active stakeholders would choose to apply for intervenor compensation shifting costs from public or private entities to utility customers and/or taxpayers.

In addition, we note that this bill does not exclude county, state, federal and other governmental agencies from eligibility for intervenor funding. Since these governmental agencies are already funded by taxpayers, it would not be appropriate to require Hawaii's citizens to pay again for the cost of a governmental agency to intervene in a PUC proceeding.

Finally, there are a number of unanswered questions posed by the proposed statutory language including but not limited to: what is the detailed process to determine whether a contribution is "substantial" warranting compensation and will such determinations be subject to appeal; how will the issue of whether an intervenor's contribution "produces a positive result or savings for consumers" v. the work of the Consumer Advocate and other intervenors, be determined; what limits will be imposed upon the "reasonable costs" and "compensation" allowed an intervenor and how will the Commission respond to claims that limitations upon expenditures impacted the ability of an intervenor to substantially contribute to a proceeding; how will the compensation to the intervenors be funded beyond the initial funding, with what limitations and for what period of time; how will the Commission determine

whether an intervenor's participation is "unproductive or unnecessary" or duplicative of another intervenor such that one intervenor over another may be compensated?

Accordingly, the Hawaiian Electric Companies oppose H.B. 805.

Thank you for this opportunity to testify.



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, January 31, 2017 1:20 PM  
**To:** EEPtestimony  
**Cc:** skaye@runbox.com  
**Subject:** Submitted testimony for HB805 on Feb 2, 2017 08:30AM

**HB805**

Submitted on: 1/31/2017

Testimony for EEP on Feb 2, 2017 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
sally kaye	Individual	Support	No

Comments: Especially in an island state, such an intervenor compensation program is essential to insure equal opportunity to participate by Neighbor Island residents.

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

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**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 1, 2017 10:18 PM  
**To:** EEPtestimony  
**Cc:** Christinenoel@live.com  
**Subject:** \*Submitted testimony for HB805 on Feb 2, 2017 08:30AM\*

**HB805**

Submitted on: 2/1/2017  
Testimony for EEP on Feb 2, 2017 08:30AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christine Johnson	Individual	Support	No

Comments:

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

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