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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. 1219 - RELATING TO PUBLIC UTILITIES

**DESCRIPTION:**

This measure proposes to authorize the Public Utilities Commission (“PUC” or “Commission”), during its ratemaking procedures, to set a utility fair return at not more than 5%.

**POSITION:**

The Division of Consumer Advocacy (“Consumer Advocate”) offers comments to this bill.

**COMMENTS:**

In the determination of a reasonable rate of return, there must be a balance between what might be necessary to attract capital from investors and what is reasonable to expect to be recovered from customers. If the rate is too high, investors will be willing to provide funds, but customers may be adversely affected by high utility bills. Conversely, if the rate is too low, customers will enjoy lower utility bills, but the utility may struggle to obtain the capital necessary to upkeep existing plant as well as build new plant. Fixing the rate of return at what might be an unreasonably low rate of return may have unintended and undesirable consequences, e.g., not being able to attract sufficient capital to fund renewable energy, grid modernization, or clean water treatment plant capital investments.

Furthermore, the Commission's ability to set allowed returns is limited by the Fifth and Fourteenth Amendments to the U.S. Constitution, specifically spelled out by the U.S. Supreme Court in the pivotal cases *Bluefield Water Works v. Public Service Commission*, 262 U.S. 679 (1923), *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591 (1944), and subsequent cases in this line. The U.S. Supreme Court has stated that utilities' investors must be given a fair opportunity to earn on prudent investments a return appropriate to the risk involved with the investment when it was made, and the utility must be given an opportunity to earn enough on prudent investments to attract further capital and remain solvent. Thus, the proposed limitation on the rate of return that might be approved by the Commission raises certain constitutional questions.

It should be made clear that the Consumer Advocate always seeks to fulfill its mandate to protect, advance and represent consumers' interests before the Commission. Thus, during rate proceedings, which is the standard mechanism where the Commission determines the appropriate rate of return for regulated utilities, the Consumer Advocate participates actively and seeks to ensure that the Commission balances the consumers' interests against the utility's request, including the determination of the rate of return. During rate cases, the Consumer Advocate presents testimony from in-house witnesses or national experts as well as providing other evidence to the Commission to argue for a reasonable rate of return that considers consumers' interests, but meets the rights of utility investors under the U.S. Constitution. While the Consumer Advocate appreciates the legislature's intent of trying to benefit the consumers, the proposed fixed rate of return in this bill may not comply with the regulatory rate process shaped by decades of constitutional jurisprudence.

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. 1219  
**TITLE:** RELATING TO PUBLIC UTILITIES

Chair Lee and Members of the Committee:

**DESCRIPTION:**

This measure would limit the Commission's authority, during its ratemaking proceedings, to set a utility's fair rate of return at not more than 5%.

**POSITION:**

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

**COMMENTS:**

The Commission notes that the current ratemaking process allows the Commission to provide regulated utilities with the opportunity to earn a fair return on the property of the utility that is used and useful for public utility purposes. Allowing an opportunity to earn a reasonable rate of return is required under the Constitution and is important for a utility to achieve and maintain the commercial viability necessary for continued operations necessary to serve the public interest.

The current ratemaking process allows the Commission the discretion to determine a fair rate of return after a comprehensive review of the unique circumstances of each utility. The amendments proposed by this measure would limit that discretion for all utilities under all circumstances, including utilities for which a greater rate of return may be fair or necessary to maintain commercial viability and continue operations.

Thank you for the opportunity to testify on this measure.

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

**H.B. No. 1219**

**Relating to Public Utilities**

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.

Providing 5 per cent maximum on a utility's rate of return constitutes an unconstitutional taking of utility property in violation of the utility's Fifth Amendment rights under the United States Constitution.

The Supreme Court has clearly ruled that setting a return on equity that is too low to constitute "just compensation" is an unconstitutional taking. *See Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*, 262 U.S. 679 (1923). In *Bluefield*, the U.S. Supreme Court found that the Public Service Commission of West Virginia authorized rates that produced a return on equity of under 6 percent was too low to constitute "just compensation."

The Court described the utilities rights and the regulator's obligation:

"[A] public utility is entitled to such rates as will permit it to earn a return on the value of the property, which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties."

*Bluefield*, created expectations for investors and the regulator's obligation to honor legitimate shareholder expectations.

This law does not afford the utility an opportunity to earn a fair rate of return and violates its constitutional rights under the Fifth Amendment of the U.S. Constitution.

Accordingly, the Hawaiian Electric Companies oppose H.B. 1219.

Thank you for this opportunity to testify.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, January 31, 2017 1:15 PM  
**To:** EEPtestimony  
**Cc:** skaye@runbox.com  
**Subject:** \*Submitted testimony for HB1219 on Feb 2, 2017 08:30AM\*

**HB1219**

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:

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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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 1, 2017 10:42 AM  
**To:** EEPtestimony  
**Cc:** bob.gould@stanfordalumni.org  
**Subject:** Submitted testimony for HB1219 on Feb 2, 2017 08:30AM

**HB1219**

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>
Robert Gould	Individual	Support	No

Comments: I support this bill in general, except that I would propose an amendment to allow a utility to receive a 10% rate of return on investments supporting distributed residential power generating systems, such as Utility's purchase of battery systems on behalf of the resident, purchase of PV or wind systems on behalf of the resident, etc. so long as the Utility purchases any excess power generated at retail rates. The current situation encourages the Utility to purchase and install PV and wind systems at its cost, knowing that the added capital expenditure will provide a known rate of return to the utility. This is often done at the expense of the utility's customers.

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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