

HAWAII STATE ENERGY OFFICE STATE OF HAWAII

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DAVID Y. IGE
GOVERNOR

SCOTT J. GLENN
CHIEF ENERGY OFFICER

(808) 587-3807

Testimony of
SCOTT J. GLENN, Chief Energy Officer

before the
**SENATE COMMITTEES ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
AND
COMMERCE, CONSUMER PROTECTION, AND HEALTH**

Monday, February 10, 2020
2:45 PM
State Capitol, Conference Room 414

In SUPPORT of
SB 3036
RELATING TO RENEWABLE ENERGY TECHNOLOGIES TAX CREDITS.

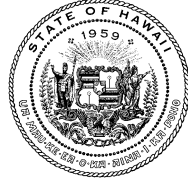
Chairs Wakai and Baker, Vice Chairs Taniguchi and Chang, and members of the Committees. The Hawaii State Energy Office (HSEO) supports SB 3036, which clarifies that, notwithstanding any law to the contrary or subsequent amendments to existing state renewable energy investment tax credits, a power purchase agreement approved by the State Public Utilities Commission prior to 12/31/2019 shall receive thirty-five per cent of the actual cost or up to the applicable cap amount of \$500,000 per solar energy system. The HSEO defers to appropriate agencies regarding administration of the provisions contained in this bill.

The HSEO notes that there are several bills this session that propose to phase out or discontinue the renewable energy technologies income tax credit for commercial-scale projects, and several approaches to mitigate the potentially negative disruption caused by uncertainty of tax credits available for projects currently under development. SB 3036 appears to provide an effective means of addressing this concern.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
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RONA M. SUZUKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

To: The Honorable Glenn Wakai, Chair;
The Honorable Brian T. Taniguchi, Vice Chair;
and Members of the Senate Committee on Energy, Economic Development, and
Tourism;

The Honorable Rosalyn H. Baker, Chair;
The Honorable Stanley Chang, Vice Chair;
and Members of the Senate Committee on Consumer Protection and Health

From: Rona M. Suzuki, Director
Department of Taxation

Re: S.B. 3036, Relating to Renewable Energy Technologies Tax Credits

Date: Monday, February 10, 2020

Time: 2:45 P.M.

Place: Conference Room 414, State Capitol

The Department of Taxation (Department) offers the following comments regarding S.B. 3036.

S.B. 3036 amends section 235-12.5, Hawaii Revised Statutes, which governs the Renewable Energy Technologies Income Tax Credit (RETTTC). It amends the credit for solar energy systems so that notwithstanding any laws or subsequent amendments to the contrary, a power purchase agreement approved by the Public Utilities Commission prior to December 31, 2019 will be locked into the existing credit structure and shall continue to receive thirty-five per cent of the actual cost or the applicable cap amount, whichever is less. The measure is effective upon approval.

The Department notes that allowing certain taxpayers to claim a past version of the credit essentially means that Department must administer two versions of the credit. Even if a small number of taxpayers would qualify for the grandfathering, the Department would need to maintain the previous version of the credit like it does with any other credit. As such, the Department respectfully requests that the grandfathering provision in section 235-12.5(a)(1), HRS, be amended so that the project is required to be installed and placed in service on or before December 31, 2021.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: RELATING TO RENEWABLE ENERGY TECHNOLOGIES TAX CREDITS

BILL NUMBER: SB 3036; HB 2039

INTRODUCED BY: SB by KIDANI, WAKAI, Baker, Kanuha, Keith-Agaran, Shimabukuro, Taniguchi; HB by YAMANE

EXECUTIVE SUMMARY: Provides that notwithstanding any law to the contrary or subsequent amendments to existing state renewable energy investment tax credits, a power purchase agreement approved by the public utilities commission prior to 12/31/2019 shall receive thirty-five per cent of the actual cost or up to the applicable cap amount of \$500,000 per solar energy system.

SYNOPSIS: Amends section 235-12.5(a), HRS, to insert a grandfather clause to provide that notwithstanding any law to the contrary and any subsequent amendments to law, a power purchase agreement approved by a decision and order issued by the public utilities commission prior to December 31, 2019, shall continue to receive thirty-five per cent of the actual cost or the cap amount determined in subsection (b), up to the applicable cap amount of \$500,000 per solar energy system.

EFFECTIVE DATE: Upon approval.

STAFF COMMENTS: This measure is designed to “grandfather” tax treatment for utility-scale renewable energy projects that were approved by the PUC in 2019 or earlier. Given that such projects take a while to build and the law generally applied is the law in effect when the project is placed into service, measures like this one may be seen as necessary to protect against the risk that the credit amounts or caps will be changed while the project is being constructed.

Digested 2/6/2020



**Testimony to the Committee on Energy, Economic Development & Tourism
Committee on Commerce, Consumer Protection, and Health
Monday, February 10, 2020
2:45 PM
Hawaii State Capitol
Senate Bill 3036**

Chair Wakai, Chair Baker, Vice Chair Taniguchi, Vice Chair Chang, and members of the committee,

174 Power Global **strongly supports** SB3036, which relates to renewable energy tax credits. We know how essential clean energy is to Hawaii's future, and we are proud to be among the developers that bring these projects to life across the state. We believe we are representative of numerous renewable energy developers who bid into a HECO competitive bidding process overseen by the PUC in 2018-2019 known as RFP 1. Bidders were required to provide binding proposals with energy pricing that incorporated state tax credits that were in place at that time, under the assumption those state tax credits would continue to be available. The current HECO RFP 2 process no longer requires proposals to include energy pricing based on the same assumption.

The legislature understands how important commercial utility-scale renewable energy projects are to the state's stated 2045 clean energy goal and has wisely provided investment tax credits to develop such projects. These and federal renewable energy tax credits are applied to the rates that are contracted with the electric utility and are ultimately reflected in the rates benefitting ratepayers.

The federal tax credits can be locked in at a point in time when the development is at a point of relative surety, for example upon approval by the Public Utilities Commission. However, state law mandates that any tax credit must be applied for upon completion of the project, which often-times may be four, five or more years after the binding pricing was accepted.

This creates a financing exposure for the project. When the legislature considers proposals that change or eliminate renewable energy tax credits, renewable energy projects that are already under development and contracted through a competitive bid process in reliance on the tax credits that were available at the inception of the project are put in serious jeopardy. The same risk is true if the Department of Taxation revises their Administrative Rules.

This unintended consequence creates several unfortunate scenarios: (1) there is a risk that the projects may not be financeable, and therefore, may not be built, (2) ratepayers are denied the benefits originally contracted for and approved by the PUC, (3) the state stands to lose any

Ho'ohana Solar 1 LLC

federal tax credits applied to the project, which are rapidly declining and (4) the state runs a risk of endangering its progress towards its 2045 goal.

Put simply, without those credits, the projects run the risk of not being viable and not bringing those benefits to those who need it most: the ratepayers of Hawaii.

This bill wisely recognizes that peril and preserves those credits already in place for commercial utility-scale properties that were granted a power purchase agreement approved by the Public Utilities Commission prior to December 31, 2019.

This bill ensures that projects can be assured that their financing and construction plans will not be derailed by changes to the tax credits. This certainty clears the way for projects to be delivered to the ratepayers' benefit.

Therefore, we support SB3036, and we request that if the legislature amends HRS §235-12.5, that it include the amendment provided in SB3036, and to amend with additional language referenced in the Department of Taxation November 20, 2012 Tax Information Release No. 2012-01, which defines "total output capacity" requirements as:

"Commercial property – at least 1,000 kilowatts per system"

The following is our recommended amendment to SB3036:

Page 3 lines 18-21 continued on Page 4 lines 1-7

(1) For each solar energy system: thirty-five per cent of the actual cost or the cap amount determined in subsection (b), whichever is less; ~~[or]~~ provided that, notwithstanding any law to the contrary and any subsequent amendments to this paragraph [or to any applicable law], [a solar energy system with] a power purchase agreement approved by a decision and order issued by the public utilities commission prior to December 31, 2019, shall continue to receive thirty-five per cent of the actual cost or ~~the cap amount determined in subsection (b), up to the applicable cap amount~~ of \$500,000 per solar energy system [in which each system has a total output capacity of at least 1,000 kilowatts per system of direct current for commercial property], [whichever is less]; or

Thank you for the opportunity to testify.



Testimony to the Committee on Energy, Economic Development & Tourism
Committee on Commerce, Consumer Protection, And Health

Monday, February 10, 2020
2:45 PM
Conference Room 414, Hawaii State Capitol
Senate Bill 2821

Chair Wakai, Chair Baker, Vice Chair Taniguchi, Vice Chair Chang and members of the committee,

The Hawaii Clean Power Alliance (HCPA) **supports SB3036**, relating to renewable energy technology tax credits.

The Hawaii Clean Power Alliance is a nonprofit association organized to advance the development and sustainability of clean energy in Hawaii. Our goal is to support the state's policy goal of 100 percent renewable energy by 2045. Our members are utility-scale independent power producers.

Utility-scale renewable energy is critical to meeting the state's clean energy goals because it provides long-term stable costs for those drawing from the grid, thus hedging the volatility associated with the reliance on oil. To drive down costs that are passed on to the ratepayer, developers must assume the risks that are inevitably a part of the permitting, entitlements, and financing for these projects. The more ability we have to manage those risks, the more opportunity we have to deliver the projects at a low rate.

Projects that are underway after approval by the Public Utilities Commission in 2019 (RFP 1), under the guidance of Hawaiian Electric Company and the Public Utilities Commission, reflected rates established with the existing state and federal tax credits built into that pricing. While the federal incentives remain in place and can be locked in as soon as the PPA is approved, the state ITC can only be applied for after the solar farm is placed into service, several years into the future. Changes to those state tax credits and Department of Taxation Administrative Rules threaten the viability of the projects.

Changes to this statute without allowing for those projects already approved by the PUC to be exempt from future adjustments puts an unnecessary and onus burden back on the ratepayer—our residents and neighbors we are all committed to protect with affordable, reliable energy.

We recommend that language be added that clarifies that if any changes to the paragraphs referred to in the amendment be changed or eliminated, that there is further clarification to include changes to "any applicable law" and the "total output capacity" as referred to by the Department of Taxation Administrative Rule be also added to this amendment.

Thank you for your ongoing work in this arena and for taking the time to consider our testimony.



Sincerely,

A handwritten signature in black ink, appearing to read "Fred Redell", written in a cursive style.

Frederick Redell, PE

Executive Director

(949) 701-8249

www.hawaiicleanpoweralliance.org



Sen. Glenn Wakai, Chair
Hawaii State Senate
Energy, Economic Development and Tourism Committee

Sen. Rosalyn Baker, Chair
Hawaii State Senate
Commerce, Consumer Protection and Health Committee

SB3036, Relating to Renewable Energy Technologies Tax Credit
IN SUPPORT

Energy, Economic Development and Tourism Committee
Commerce, Consumer Protection and Health Committee

Monday, February 10, 2020
Room 414

Aloha Chairs Wakai and Baker and Members of the Committees:

My name is Kirstin Punu, Project Manager for AES Distributed Energy. We appreciate the opportunity to testify in SUPPORT of SB3036.

AES Distributed Energy (AES DE) develops, owns and operates solar and solar plus storage projects throughout Hawaii with 47 MW of solar plus storage in operation on the island of Kauai, 8.8 MW of solar in operation on Oahu and Maui, and multiple projects in various stages of development on Oahu, Maui and Hawaii island.

We recognize and appreciate the legislature's desire to revisit the renewable energy tax credit program. However, we believe it is important to protect the slate of utility-scale solar and battery storage projects that relied on these tax credits prior to December 31, 2019 when their Power Purchase Agreements (PPAs) were approved or filed and pending approval by the Public Utilities Commission. At the time of PPA execution and filing with the PUC, project developers were required to utilize these tax credits in their financial plans and pass through the tax credit value in the form of lower PPA rates.

Collectively, these projects have the potential to generate over 11 percent of our state's current energy needs with locally produced renewable energy. Without these tax credits, however, these projects would be at risk of failure thus setting Hawaii back in its efforts to achieve its clean energy future.



To properly protect all of the projects in this category, we recommend the following amendment:

(1) For each solar energy system: thirty-five per cent of the actual cost or the cap amount determined in subsection (b), whichever is less; ~~provided that,~~ notwithstanding any law to the contrary and any subsequent amendments to this paragraph, a power purchase agreement **either** approved by a decision and order issued by the public utilities commission **or filed and pending approval by the public utilities commission** prior to December 31, 2019, shall continue to receive thirty-five per cent of the actual cost or the cap amount determined in subsection (b), up to the applicable cap amount of \$500,000 per solar energy system; or

AES Distributed Energy believes it is important to ensure the renewable energy tax credits can be protected for the aforementioned projects through the passage of SB3036 and looks forward to working with the legislature as it continues to examine its tax credit policies for the future.



Hawaiian
Electric

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**TESTIMONY BEFORE THE SENATE COMMITTEES ON
ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
&
COMMERCE, CONSUMER PROTECTION, AND HEALTH**

S.B. 3036

Relating to Renewable Energy Technologies Tax Credits

Monday, February 10, 2020

2:45 p.m.

State Capitol, Conference Room 414

Duke T. Oishi
Legal Department
Hawaiian Electric Company, Inc.

Dear Chair Wakai and Chair Baker, Vice Chair Taniguchi and Vice Chair Chang, and
Members of the Committees,

My name is Duke Oishi and I am testifying on behalf of Hawaiian Electric
Company, Inc. (Hawaiian Electric) with **comments on S.B. 3036**, Relating to
Renewable Energy Technologies Tax Credits.

S.B. 3036 proposes to amend Section 235-12.5(a) of the Hawaii Revised
Statutes to clarify that, notwithstanding any law to the contrary or subsequent
amendments to the state renewable energy tax credit law, a power purchase agreement
approved by the Public Utilities Commission (PUC) prior to December 31, 2019 shall
receive thirty-five per cent of the actual cost or up to the applicable cap amount of
\$500,000 per solar energy system. Per the preamble of the bill, the purpose of this bill
is to provide developers of utility scale renewable energy projects with certainty that the
currently existing renewable energy tax credit will still apply to projects when they are
ultimately completed if they were approved by the PUC prior to December 31, 2019.

Hawaiian Electric notes that through a PUC-approved first phase of a request for proposals for variable renewable dispatchable generation, Hawaiian Electric executed power purchase agreements for eight utility-scale renewable energy projects (the “Phase 1 Projects”). Seven of these projects would fall within the scope of this bill. If the state renewable energy tax law changes, and these projects are not grandfathered, the success of these projects and the benefits they are expected to provide to customers of Hawaiian Electric may be lost.

Hawaiian Electric therefore supports the overall concept of grandfathering as proposed by S.B. 3036, as the bill would reduce the risk to these projects and help ensure that the projects receive the tax credits contemplated by the parties involved. These projects were required to pass through the full value of the renewable energy technologies income tax credit to ratepayers in the form of lower power prices. If the projects are unable to claim the tax credit, which they currently cannot secure until after project completion and reaching commercial operations, there is a risk that these projects may become uneconomical, unfinanceable, and ultimately, may not be developed.

Hawaiian Electric supports changing the tax credit law to include a grandfathering provision, but suggests modifications to S.B. 3036 to (1) ensure that all Phase 1 Projects are captured by the provision, (2) extend the grandfathering provision to other eligible utility scale projects, and (3) allow adjustments to the tax credit amount while still allowing for possible grandfathering of future projects. As currently drafted, one of the eight Phase 1 Projects would be excluded from the grandfathering provision, as the power purchase agreement for that project has not yet been approved. At a

minimum, we believe the grandfathering provision should be revised to include this eighth project.

However, Hawaiian Electric believes an even broader revision would be more beneficial to customers allowing for procurement of lower cost energy. We respectfully suggest that proposed Subsection (a) of Section 235-12.5 of the Hawaii Revised Statutes be revised to align with the federal investment tax credit (ITC). Under the federal ITC statute and related regulations, a developer is able to grandfather the tax credit at the credit amount in place at the time the developer spends 5% of the total project cost. This could lead to lower power purchase agreement pricing without locking the State into providing large tax credits indefinitely into the future, as it would provide the Legislature with flexibility to change tax credits applicable to future projects, but still allow a developer to know the amount of tax credits it is eligible to receive.

Providing for a broader grandfathering provision would help the state reach its aggressive 100% renewable goal with lower cost projects. For example, bidders who submitted proposals for Hawaiian Electric's current Phase 2 request for proposals are not required to assume the risk of changes to the state tax law, but will be required to pursue the maximum available state tax credit available. These developers will be required to remit the tax credit proceeds they receive to Hawaiian Electric, and Hawaiian Electric would pass such proceeds through to customers directly and without mark-up, resulting in a reduction to customers' electric bills.

Thank you for this opportunity to testify.

Clearway Energy Group
100 California Street, Floor 4
San Francisco, CA 94111

clearwayenergygroup.com

LATE



February 10, 2020

Via Electronic Submittal

**Senate Committees on Energy, Economic Development and
Tourism and Commerce, Consumer Protection and Health**

Monday, February 10, 2020
2:45 pm
State Capitol, Room 414

Nicola Park
Origination Manager, Clearway Energy Group

In support of SB 3036
Relating to Energy

Chairs Wakai & Baker, Vice Chairs Taniguchi Chang and Members of the Committee:

Clearway Energy Group supports SB 3036, which provides much-needed certainty as to the value of the state tax credit for utility-scale renewable energy projects already in development to support the State's renewable energy goals.

Clearway Energy Group is one of the largest clean energy companies in the United States. On Oahu, Clearway has constructed three utility-scale solar projects that were completed and began delivering carbon-free electricity to the grid in 2019, with a total generating capacity of 110 MW AC.

Additionally, Clearway has two utility-scale solar projects in development for which the Public Utilities Commission (PUC) has approved 20-year PPAs with Hawaiian Electric. The two projects – Waiawa Solar Power and Mililani I Solar – incorporate battery storage that will provide flexibility and resiliency to the electric grid. The two new projects will generate 75 megawatts (MW) of low-cost renewable energy, advancing the State's renewable energy goal of 100% by 2045 while saving ratepayers on their electric bills.

Tax Credit Eligibility for Projects with Signed Power Purchase Agreements

Clearway supports the provision of SB 3036 that locks in the value of the state tax credit for utility-scale projects that were selected and filed PPAs with the PUC before the end of 2019 (“eligible utility-scale renewable energy projects”).

This provision of SB 3036 would allow eligible utility-scale renewable energy projects to move forward with the certainty required to secure construction financing and start construction later this year. For these projects, all project developers were required to pass through the full value of the tax credit to ratepayers in the form of lower power prices, based on the assumption that projects would continue to be eligible for the state tax credit as it exists today. However, project owners cannot apply to receive the state tax credit until after the projects are commercially operational. SB 3036 would bridge this gap by confirming the value of the state tax credit that has already been assumed and passed along to ratepayers.

The timely completion of these projects will help to advance broader state policy goals. With estimated completion dates between 2021 and 2023, eligible utility-scale renewable energy projects are needed to meet the planned timelines for retirement of fossil fuel power plants and achievement of Renewable Portfolio Standard targets. Given the long lead time needed to develop utility-scale projects in Hawai‘i, it would not be feasible to develop and complete new projects by 2023.

Clearway hopes that these comments are helpful in informing consideration of SB 3036, and we look forward to answering any questions you might have on our testimony.