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DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Energy & Environmental Protection
And
House Committee on Water & Land
Thursday, March 14, 2024
8:30 a.m.
Conference Room 325

On the following measure:
S.B. 3285, S.D. 1, RELATING TO PUBLIC UTILITIES

Chair Lowen, Chair Ichiyama, and Members of the Committees:

My name is Michael Angelo, and I am the Executive Director of the Department of Commerce and Consumer Affairs (Department) Division of Consumer Advocacy. The Department offers comments on this bill.

The purpose of this bill is to prohibit the Public Utilities Commission (Commission) from approving the sale of a public utility, in whole or in part, to a private entity, unless the public utility being offered for sale demonstrates that it solicited competitive offers from an entity operating under a non-investor-owned utilities ownership model, and notes whether or not non-investor-owned entities submitted acceptable bids, in any application to the Commission requesting authorization for a sale of the public utility.

The Department understands the concerns over the future of Hawaii utilities at this time, especially with Hawaiian Electric Company, Inc. and future utility ownership business models generally. With those concerns in mind, the Department appreciates

the intent of this bill to ensure that, in the event of the sale of all or part of a public utility, all possible business models are considered, including non-investor-owned utility ownership models. If the Committees decide to move this bill forward, the Department respectfully offers the following amendments that are intended to better integrate the bill's proposed provisions within Hawaii Revised Statutes (HRS) Chapter 269's existing structure especially for utility sales and transfers of control, and to reflect the Commission's jurisdiction over proposed utility sales.

First, the Department respectfully recommends that the proposed § 269-_(a) be amended to also cross reference HRS § 269-7.5, in addition to the current cross reference to HRS § 269-19, since the former section is similarly implicated by a proposed sale and transfer of control of a public utility. The Department notes how these two sections currently reflect the Commission's substantial authority to deny an application for a proposed utility sale if it is found not to be in the public interest.

Second, proposed § 269-_(b) appears to define a term that is not used in the proposed subsection (a); it would be more appropriate to define "non-investor-owned utilities ownership model" because that is the term actually used in the proposed subsection (a).

Third, the addition of the qualifier "and is operating as a public utility" in proposed § 269-_(b) may be too restrictive. In its current use for the anticipated purchaser with or intending an "investor-owned utilities ownership model", an investor-owned entity that is not yet operating as a public utility, like, for example, a private equity firm, may argue that it does not trigger this statute in the first place. Or even in the Department's recommended version of this definition section (see below), the qualifier "and is operating as a public utility", when added to the intended solicitation in subsection (a), could disqualify any non-investor-owned entities that would want to buy and run the public utility being sold because the former is not yet "operating as a public utility".

Therefore, the Department respectfully recommends the following amendments to the bill:

"§269- Sale of public utility. (a) Notwithstanding sections 269-7.5 and 269-19, the public utilities

commission shall not approve the sale of a public utility, in whole or in part, to a private entity unless the public utility being offered for sale demonstrates that it first solicited competitive offers for the purchase of the public utility from entities that operate under a non-investor-owned utilities ownership model, and notes whether or not non-investor-owned entities submitted acceptable bids, in any application to the commission requesting authorization of the sale of the public utility.

(b) For the purposes of this section, "non-investor-owned utilities ownership model" means a not-for-profit enterprise that is not ~~publicly or privately~~ owned by shareholders ~~and is operating as a public utility.~~"

Finally, to complement the intent of this bill and bolster the Commission's ability to manage a proposed sale of a utility in more severe circumstances, such as in the case of distressed utilities, which are within the Commission's recognized jurisdiction and authority, the Legislature should also consider adding a new Section to this bill to amend HRS § 269-14.5 so that the statutory provision to appoint a public utility receiver applies to any public utility that meets that section's existing threshold of "failing, or . . . imminent threat of . . . failing, to provide adequate and reasonable service to its customers, and . . . the failure is a serious and imminent threat to health, safety, and welfare". The narrow existing application to only a "regulated water utility or regulated sewer utility" or "any water or sewer utility regulated under this chapter" should in each case be amended to just "public utility".

Thank you for the opportunity to testify on this bill.

TESTIMONY OF
LEODOLOFF R. ASUNCION, JR.
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

TO THE
HOUSE COMMITTEES ON
ENERGY AND ENVIRONMENTAL PROTECTION
AND
WATER AND LAND

March 14, 2024
8:30 a.m.

Chairs Lowen and Ichiyama, Vice Chairs Cochran and Poepoe, and Members of the Committees:

MEASURE: S.B. No. 3285 SD1

TITLE: RELATING TO PUBLIC UTILITIES.

DESCRIPTION: Prohibits the Public Utilities Commission from approving the sale of a public utility, in whole or in part, to a private entity, unless the public utility being offered for sale demonstrates that it solicited competitive offers from an entity operating under a non-investor-owned utilities ownership model, and notes whether or not non-investor-owned entities submitted acceptable bids, in any application to the PUC requesting authorization for a sale of the public utility. Takes effect 7/1/2040. (SD1)

POSITION:

The Public Utilities Commission (“Commission”) offers the following comments for consideration.

COMMENTS:

The Commission appreciates the intent of this measure to encourage diversity of utility ownership models by requiring that a public utility demonstrate that it solicited competitive offers from an entity operating under a non-investor-owned utilities ownership model before the PUC approves the sale of a public utility, in whole or in part, to a private entity, and offers the following comments.

On February 20, 2024, the Commission offered testimony on this measure before the Senate Committee on Commerce and Consumer Protection and appreciates the amendments made by the Committee to advance this measure.

The Commission notes one concern about S.B. 3285, SD 1 covering all regulated public utilities. The current definition of “public utility” in HRS § 269-1 includes a broad range of entities such as electric utilities, gas utilities, water and wastewater utilities, telecom utilities, and water and motor carriers. Consequently, the Commission has supervision of over 2,000 regulated entities. S.B. 3285, SD 1 would require that the PUC ensure offers were solicited from non-investor-owned entities for a sale of any of these regulated entities. In recent years, the Commission has typically seen between five and ten applications each year related to the sale, merger, or acquisition of a public utility, most of which involve small wireless telecom companies. It is highly unlikely that any non-investor-owned entity would be interested in purchasing any of the small wireless telecom companies that are the typical applicants in dockets relating to the sale of a public utility, and imposing a requirement that all public utilities demonstrate that they have first solicited competitive offers for the purchase of the public utility from entities that operate under a non-investor-owned utilities ownership model would likely needlessly increase the regulatory burden on any such small public utility and may not yield beneficial results.

The Commission observes that while the Commission could implement this measure as currently drafted, it may be best suited for regulated electric, gas, and landline utilities, or those that serve a larger customer segment.

Thank you for the opportunity to testify on this measure.



Email: communications@ulupono.com

HOUSE COMMITTEES ON ENERGY & ENVIRONMENTAL PROTECTION AND WATER & LAND
Thursday, March 14, 2024 — 8:30 a.m.

Ulupono Initiative supports the intent of SB 3285 SD1, Relating to Public Utilities.

Dear Chair Lowen, Chair Ichiyama, and Members of the Committees:

My name is Micah Munekata, and I am the Director of Government Affairs at Ulupono Initiative. We are a Hawai'i-focused impact investment firm that strives to improve the quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food, renewable energy and clean transportation choices, and better management of freshwater resources.

Ulupono supports the intent of SB 3285 SD1 and offers comments. This bill prohibits the Public Utilities Commission from approving the sale of a public utility, in whole or in part, to a private entity, unless the public utility being offered for sale demonstrates that it solicited competitive offers from an entity operating under a non-investor-owned utilities ownership model, and notes whether or not non-investor-owned entities submitted acceptable bids, in any application to the PUC requesting authorization for a sale of the public utility.

Ulupono recognizes the high regard that is held for non-investor-owned utility models in Hawai'i. This high regard owes considerably to the performance of the electricity co-op on Kaua'i. That said, alternative ownership models are not a panacea, and they come with associated challenges and risks that should be evaluated alongside a bonafide offer for purchase from a private entity if and when that time comes. Ulupono supports the notion that a more robust field of potential buyers would help achieve a more ideal result if the State had the opportunity to weigh the various pros and cons of each suitor. To ensure transparency, fairness, and informed decision-making process, Ulupono recommends that the bill provide clarity regarding timing and the duration in which the public utility should provide for the non-investor-owned solicitation before proceeding with the private offer.

Thank you for the opportunity to testify.

Respectfully,

Micah Munekata
Director of Government Affairs

Investing in a Sustainable Hawai'i



**Hawaiian
Electric**

**TESTIMONY BEFORE THE HOUSE COMMITTEES ON
ENERGY & ENVIRONMENTAL PROTECTION
AND
WATER & LAND**

**SB 3285, SD1
Relating to Public Utilities**

Thursday, March 14, 2024
8:30 AM
State Capitol, Conference Room 325

James Abraham
Associate General Counsel
Hawaiian Electric

Dear Chair Lowen, Chair Ichiyama, Vice Chair Cochran, Vice Chair Poepoe, and Members of the Committees,

My name is James Abraham and I am submitting testimony on behalf of Hawaiian Electric offering comments on SB 3285, SD1, Relating to Public Utilities.

Hawaiian Electric has some concerns with the effect of this bill, which could delay and ultimately frustrate a transaction that could otherwise be in the public interest. If enacted, this bill would require not only the extensive approval process before the Public Utilities Commission prior to the sale of a public utility, which would only be approved if such sale is reasonable and in the public interest, but would also require additional delay for an uncertain competitive solicitation. It is unclear what this undefined, novel solicitation process would entail or how long it may take, as well as whether there would even be entities in existence to respond to such solicitation. The potential for substantial delay while such entities are formed and funded could jeopardize an agreed upon sale that would otherwise meet all public interest criteria of the Public Utilities Commission, to the ultimate detriment of a utility's customers. Moreover, it is unclear whether the Public

Utilities Commission has authority to dictate or force a public utility to accept an alternate purchase proposal, especially for any public utilities with public shares regulated by the federal Securities Exchange Commission.

Hawaiian Electric appreciates the Committee's consideration of its comments on SB 3285, SD1. Thank you for this opportunity to testify.



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COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

Rep. Nicole E. Lowen, Chair

Rep. Elle Cochran, Vice Chair

COMMITTEE ON WATER & LAND

Rep. Linda Ichiyama, Chair

Rep. Mahina Poepoe, Vice Chair

NOTICE OF HEARING

DATE: Thursday, March 14, 2024

TIME: 8:30am

PLACE: Conference Room 325

SB 3285, SD1 RELATING TO PUBLIC UTILITIES.

Please Hold

Aloha Chairs Lowen and Ichiyama, Vice Chairs Cochran and Poepoe, and
Committee Members

Life of the Land is Hawai'i's own energy, environmental and community action group advocating for the people and `aina for 54 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.

SB 3285 is well meaning but lacks foundation.

“Prohibits the Public Utilities Commission from approving the sale of a public utility, in whole or in part, to a private entity, unless the public utility being offered for sale demonstrates that it solicited competitive offers from an entity operating under a non-investor-owned utilities ownership model, and notes whether or not non-investor-owned entities submitted acceptable bids, in any application to the PUC requesting authorization for a sale of the public utility.”

No one has offered an example of how this legislation would work in the real world.

Nor can we find any examples in U.S. history.

The Public Utilities Commission proceedings could get very complicated.

The proposed legislation could affect two types of transactions.

- The unregulated DEF holding company approaches the unregulated HEI holding company, and in secret, HEI agrees to sell the regulated HECO utility to DEF. The agreement calls for the two unregulated entities -- DEF and HEI -- to speak with one voice. Then HEI subsidiary HECO violates the agreement and offers itself for sale to non-investor-owned entities. A co-op springs to life, secures a billion dollars, and makes a bid for the utility, all within a month or two.
- Alternatively, MECO goes bankrupt. The bankruptcy court opts for a less common solution to find a buyer for MECO. In a historical first solution, the utility proposes that a co-op acquire the utility and the court agrees. A co-op springs to life, secures a billion dollars, and makes a viable bid for the utility, that satisfied the creditors.

Neither of the above examples appears to be realistic.

Mahalo

Henry Curtis
Executive Director



**Testimony to
The House Committee on Energy and
Environmental Protection & Water and Land
March 14, 2024
8:30 AM
Conference Room 325 & VIA videoconference
Hawaii State Capitol**

SB 3285 SD1

Chair Lowen, Vice Chair Cochran, Chair Ichiyama, Vice Chair PoePoe and members of the committees,

Hawaii Gas offers comments on SB 3285 SD1 requiring the public utility being offered for sale, rather than the Public Utilities Commission, to demonstrate that it first solicited competitive offers from an entity operating under a non-investor-owned utilities ownership model, and note whether or not non-investor-owned entities submitted acceptable bids, in any application to the Public Utilities Commission requesting authorization of the sale of the public utility.

Hawaii Gas appreciates the intent of this measure to the extent it seeks to increase the diversity of utility ownership models in the state; however, we are concerned that the measure is not reasonably designed to achieve this objective and may, in fact, have unintended consequences for the state's energy landscape and community at large.

Investor-owned utilities have a fiduciary duty to consider all bids from potential purchasers regardless of whether the offer is from an entity operating under a non-investor-owned utilities ownership model or not. Stated differently, all purchasers (cooperative or otherwise) are permitted to bid on any utility. Requiring utilities to solicit competitive offers from an entity operating under a non-investor-owned utilities ownership model before applying to the Public Utilities Commission for approval of the sale, will not increase the diversity of utility ownership in the state. It only further complicates the process with no discernable benefit.

The Public Utilities Commission has plenary authority, in its determination whether a potential purchaser meets the legal standard for approval of the transaction, to consider whether the purchaser is fit, willing, and able to own and operate the business. Some of the benefits of a cooperative, like prioritization of customer service and operating the utility as a not-for-profit, can be weighed against competing factors such as access to capital markets to fund and accelerate clean energy investments. The deep analytical rigor and holistic approach to balancing these differing interests is best conducted by the Hawaii Public Utilities Commission who is in the best position to conduct a fair process for all parties that helps promote diversity of utility ownership models in the state.

In conclusion, while we understand the intention behind the proposed requirement to solicit competitive offers from non-investor-owned entities for the sale of public utilities, we urge careful consideration of the practical implications and potential challenges associated with its implementation.

Thank you for the opportunity to testify.