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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Friday, February 16, 2024
9:30 a.m.
Conference Room 229**

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

Chair Keohokalole and Members of the Committee:

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 require the Public Utilities Commission (Commission) to solicit competitive offers from an entity operating under a non-investor-owned utilities ownership model before approving the sale of a public utility, in whole or in part, to a private entity.

The Department understands the concerns over the future of Hawaii utilities at this time, especially with Hawaiian Electric Company, Inc. (Hawaiian Electric), 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 Legislature decides to pass this bill, then

the Department respectfully offers the following amendments that are intended to elicit more competitive proposals, 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 recommends providing the Commission the authority, if and when it solicits competing offers to the proposed sale, to be able to seek such offers for individual service territories or individual island systems operated by the subject utility, even if the proposed private purchase that triggers this provision is for the sale of the whole utility company. Just to use Hawaiian Electric as an example, Hawaiian Electric is in actuality three separate public utilities. Hawaiian Electric operates the public utility on the island of Oahu. Hawaii Electric Light Company, Inc. (HELCO), for the island of Hawaii, and Maui Electric Company, Limited (MECO), for the islands of Maui, Molokai, and Lanai, are in turn wholly owned subsidiaries of Hawaiian Electric, and are each separate operating public utilities. The Commission may receive more responses to its solicitation for competitive offers from entities that operate under a non-investor-owned utility ownership models if prospective operators have the option of making proposals for individual service territories or individual island systems, even if the trigger-purchase is proposed for the entirety of Hawaiian Electric including MECO and HELCO. Also, some rural cooperative utility business models may fit best with smaller service territories as is the case with the grids on the neighbor islands.

Second, 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 to not be in the public interest.

While the Commission has the authority to deny applications for a proposed utility sale, it is unclear if the Commission has the inverse 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.) Therefore, the Department recommends that the most useful and feasible application of this bill's valuable concept may rather be in specifying that any offers received through a competitive solicitation under the proposed § 269-(a) should be considered evidence before the Commission in its consideration of a request to approve the sale of a public utility to a private entity. Such evidence could better enable the Commission to determine if any proposed sale to a private entity is in the public interest.

Finally, to 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 as well 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" could 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
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

February 16, 2024
9:30 a.m.

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

MEASURE: S.B. No. 3285

TITLE: RELATING TO PUBLIC UTILITIES.

DESCRIPTION: Requires the PUC to solicit competitive offers from an entity operating under a non-investor-owned utilities ownership model before approving the sale of a public utility, in whole or in part, to a private entity.

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 the PUC to solicit competitive offers from an entity operating under a non-investor-owned utilities ownership model before approving the sale of a public utility, in whole or in part, to a private entity, and offers the following comments.

Under current practice, the Commission does not solicit bids for the sale of a public utility. Typically, the Commission reviews an application by a public utility requesting authorization for a specific sale, merger, consolidation, or other such transaction. This allows the Commission to evaluate the specific circumstances of each transaction to determine if the transaction is in the public interest. Therefore, the additional requirements included in this measure may unnecessarily delay a Commission decision in any docket

involving the sale of a public utility to a private entity. The Commission may need to pause or suspend any such docket while the Commission solicits competitive offers for the purchase of the public utility from non-investor-owned entities. We note also that such solicitation of competitive offers would likely be done in accordance with state procurement statutes and administrative rules. If a non-investor-owned entity submits a competitive offer for the purchase of the public utility, the Commission would then need to open a separate docket to determine if that the sale of the public utility to the non-investor-owned entity is in the public interest. These actions would add significant time to any docket involving the sale of a public utility to a private entity, all of which might be unnecessary if no non-investor-owned entity is interested in purchasing the public utility or if the non-investor-owned entity fails to submit a competitive offer to purchase the public utility.

The Commission further notes concern about S.B. 3285 covering all regulated public utilities. The current definition of “public utility” in H.R.S. § 269-1 includes a broad range of entities such as electric utilities, gas utilities, private water and wastewater utilities, telecom utilities, and water and motor carriers. Consequently, the Commission has supervision of approximately 2,000 regulated entities. S.B. 3285 would require that the PUC solicit offers 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.

Finally, the Commission notes that there are currently no statutory or structural impediments to a non-investor-owned entity submitting an offer to a public utility at any time to purchase that public utility. Should a public utility receive and accept an offer from a non-investor-owned entity to purchase the public utility, the public utility would then ask the Commission for an order authorizing the sale of the public utility to that non-investor-owned entity. This process would be no different from the process utilized if a private or investor-owned entity submitted an offer to purchase the public utility.

The Commission offers that should the Committee wish to move this measure forward, it would be more appropriate to direct public utilities to demonstrate that they first solicited bids from non-investor-owned entities, and note whether or not non-investor-owned

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entities submitted acceptable bids, in any application to the Commission requesting authorization for a sale of the public utility.

Thank you for the opportunity to testify on this measure.

SB-3285

Submitted on: 2/12/2024 3:14:36 PM

Testimony for CPN on 2/16/2024 9:30:00 AM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|--|---------------------------|------------------------|
| Ted Bohlen | Testifying for Climate Protectors Hawaii | Support | Written Testimony Only |

Comments:

Climate Protectors Hawaii SUPPORT this bill.

Public ownership of utilities has worked well with KIUC. The bill would only require solicitation, not approval of a non-investor utility bid.

Climate Protectors Hawaii (by Ted Bohlen)



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

**SB 3285
Relating to Public Utilities**

Friday, February 16, 2024
9:30 AM
State Capitol, Conference Room 229

James Abraham
Associate General Counsel
Hawaiian Electric

Dear Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee,

My name is James Abraham and I am submitting written testimony on behalf of Hawaiian Electric offering comments on SB 3285, 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. Thank you for this opportunity to testify.