



JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
KA 'OIHANA PILI KĀLEPA
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
cca.hawaii.gov

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Ways and Means
Thursday, February 27, 2025
10:30 a.m.
Conference Room 211

On the following measure:
S.B. 1501, S.D. 1, RELATING TO ENERGY

WRITTEN TESTIMONY ONLY

Chair Dela Cruz 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: (1) allow the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements; (2) establish the Power Purchasing Costs Trust Fund; (3) establish that revenues from on-bill charges for power purchase agreements and accompanying reserves shall be held in trust by the State, and that independent power producers (IPPs) shall hold a beneficial interest in the revenue and reserve to the extent of the amounts owed under the covered power purchase agreements; and (4) appoint, authorize, and empower an electric utility to serve as the billing, collection, payment, and managing agent of the Department of Budget and Finance in the service of performing step-in agreements.

As discussed in greater detail below, the Department recommends that IPPs be required to provide information and evidence within a docketed proceeding before the Public Utilities Commission on the financing terms and conditions that they were receiving or received:

- prior to the downgrade of Hawaiian Electric's credit rating due to the Maui wildfires,
- after the downgrade, and
- after the establishment of this legislation.

The information is needed to help ensure that the legislation enables IPPs to *verifiably* deliver on the intended benefit to the State and ratepayers of obtaining clean energy generation that is more cost effective and deployed in greater amounts than would be possible absent the legislation.

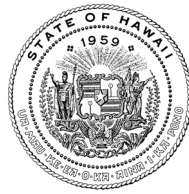
As the legislation is currently drafted, it does not include a mechanism to evaluate whether it resulted in the IPPs providing better power purchase agreement (PPA) pricing to customers and greater deployment of renewable energy. The legislation would also increase rates for Hawaiian Electric's customers for a period to establish the reserve account to provide a cushion to ensure that IPPs under a "covered power purchase agreement" are always paid in full.

The Department believes that the legislation appears to provide a significant benefit to IPPs in that it addresses key concerns regarding their ability to obtain financing for their projects because of their lenders' concerns that Hawaiian Electric would be allowed to stop paying IPPs for the energy that they provided to Hawaiian Electric.¹ However, there is not a readily apparent means to evaluate whether the legislation, if approved, *would* result in decreased pricing on PPAs to ratepayers or *would* enable IPPs to obtain financing for their renewable projects to allow them to proceed with their project. Importantly, however, the legislation *would* raise rates on Hawaiian Electric's customers for a period through the reserve fee in the proposed legislation's Hawaii Revised Statutes § 269-E.

¹ See e.g., Ameresco's Written Testimony to the Committee on Energy & Environmental Protection on House Bill 974, which is the companion legislation to Senate Bill 1501.

The Department believes that this legislation could help provide a means to enable more cost-effective deployment of renewable energy more rapidly than without the legislation. However, it is critical that the legislation includes a mechanism to provide greater assurance that it is enabling IPPs to deliver the intended benefits to the State and ratepayers. For these reasons, the Department recommends that the bill's language be modified to require IPPs to provide information and evidence on the financing terms and conditions, as described above, to evaluate whether the State and ratepayers are receiving the benefits that the legislation intends to deliver.

Thank you for the opportunity to testify on this bill.



JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

SABRINA NASIR
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
Ka 'Oihana Mālama Mo'ohelu a Kālā
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT

WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 1501, S.D. 1

February 27, 2025
10:30 a.m.
Room 211 and Videoconference

RELATING TO ENERGY

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 1501, S.D. 1, adds a new part to Chapter 269, HRS, to:

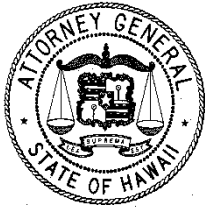
1) require B&F to enter into a step-in agreement for payment obligations arising under power purchase agreements entered into from an electric utility and its regulated subsidiaries and independent power producers in the event of a default; 2) establish the Power Purchase Costs Trust Fund (PPCTF) within the State Treasury for B&F to collect revenues and make payments under a step-in agreement; 3) require the Public Utilities Commission (PUC) to authorize a power purchase costs reserve fee to be collected and maintained by the electric utility and transmitted to the PPCTF in the event of a step-in agreement; and 4) authorize B&F to contract with an electric utility or its successor to act as an agent of the department to provide billing, collection, payment, management, and other related services to effectuate a step-in agreement.

It is unclear whether the proposed PPCTF would be self-sustaining even after the deposit of surcharge revenues from power purchase costs reserve fees given the potential overall financial state of the electric utility should a default occur.

B&F also echoes the concerns raised by the Department of the Attorney General regarding the following features of the bill:

- The bill mandates B&F to enter into step-in agreements with no discretion to determine whether doing so is in the best interests of the State under the circumstances.
- The bill mandates PUC to authorize power purchase costs reserve fee surcharges with no discretion to determine whether doing so is in the best interest of the State and the ratepayers under the circumstances.
- The reserve account and surcharge of up to 15% of the utility's forecasted monthly power purchase costs in the proposed Section 269-E, HRS, could provide an additional revenue source to the utility at the expense of ratepayers.
- The bill may create liability on the part of B&F and the State. Prior to any significant statutory amendments, studies should be carried out to determine the appropriate contingencies and policies necessary to protect the State and its interests as it continues its transition onto clean energy.

Thank you for your consideration of our comments.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

S.B. NO. 1501, S.D. 1, RELATING TO ENERGY.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, February 27, 2025 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Randall S. Nishiyama,
Deputy Attorney General, at (808) 586-1267)

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General provides the following comments regarding this bill.

This bill seeks to have the State, pursuant to step-in agreements, make payments to independent power producers (IPP) for purchased power in the event of a default by an electric utility. A step-in agreement is an agreement that allows a third party, the State, to "step-in" and take over certain obligations under the agreement if an electric utility fails to meet its obligations under the agreement, for example, failing to make payments to an IPP. The step-in agreement is intended to provide continuity of payments to an IPP. Further, this bill establishes the statutory framework to effectuate this program, including establishing the Power Purchasing Costs Trust Fund to deposit moneys received from ratepayers.

We note that the bill proposes several features that could adversely impact the State and its residents. The following list highlights those features that we believe are material for the Legislature to consider in its assessment of the bill.

1. ***Elimination of discretion by the State:*** The bill ***requires*** the Department of Budget and Finance (B&F) to enter into "step-in agreements" with the IPPs. Under a step-in agreement, B&F is required to make payments for power purchase costs owed by an electric utility to an independent power producer in

the event of a default by the electric utility under its power purchase agreement with the IPP. Also, under a step-in agreement B&F is **obligated** to pay claims of independent power producers from moneys in the fund arising out of the termination of a power purchase agreement by the electric utility under bankruptcy law. New section 269-B(a) provides that "The department **shall** enter into a step-in agreement with an obligee that **requires** the department to make prompt and full payments for power purchase costs owed by an electric utility to the obligee in the event of a default. Notwithstanding any other provision in this part to the contrary, a step-in agreement **shall** also **obligate** the department to pay claims of the obligee from moneys in the fund arising out of the termination of a covered power purchase agreement by the electric utility under bankruptcy law." See page 9, line 15, through page 10, line 2 (emphases added).

2. ***Elimination of discretion by the Public Utilities Commission:*** The bill **requires** that the Public Utilities Commission (PUC) authorize a surcharge to be included in electric utility customer bills and that the PUC allows monthly rate adjustments to become effective upon a filing by the electric utility with the PUC. New section 269-E(a) provides that "By August 1, 2025, the public utilities commission **shall** authorize a surcharge proposed by an electric utility, referred to as the power purchase costs reserve fee, the revenue from which shall be accorded the same treatment as revenue from power purchase charges as described in section 269-B(g). The power purchase costs reserve fee may be included in the purchased power adjustment clause on customer bills." See page 19, lines 13-19.
3. ***Creation of a Reserve Equates to an Additional Source of Revenues for an Electric Utility at the Cost of the Customers:*** The bill provides for the establishment of a reserve that is funded through a surcharge to be included in electric utility customer bills. The bill proposes a surcharge in an amount not to exceed fifteen percent of the utility's forecasted monthly power purchase costs of all power purchase agreements (see page 19, line 12, through page 20, line

7) subject to a "step-in agreement" in the case that the utility has a shortfall in revenues based on an overestimate of revenues by the utility. Currently, any shortfall in the utility's forecasted monthly power purchase costs is covered by the utility. Establishing a reserve funded by a surcharge (paid by the customers) provides an additional source of revenue for the utility, at the expense of its customers, which additional revenue source can be used by the utility to fulfil its payment obligations in case the utility forecasts incorrectly.

4. ***The Department of Budget and Finance is Required to Take Affirmative Actions.*** Section 269-B(k) of the bill at page 15, lines 8-15, ***requires*** B&F to ***promptly*** file monthly rate adjustments with the PUC on the electric utility's behalf if the electric utility fails to file such monthly rate adjustments with the PUC. It is not clear how B&F will be in a position to know what monthly rates adjustments are required.
5. ***The Reasonable Reserve Requirement Is Not Necessary.*** Section 269-E(e) at page 20, lines 15-19, refers to the reasonable reserve requirement of article VII, section 13, clause 8, of the Hawaii Constitution. That provision is only applicable if B&F were to make a loan to the electric utility under the step-in agreement. Since no loan is contemplated by this bill, section 269-E(e) is not necessary and should be deleted.
6. ***Potential State Liability.*** We need to ensure that any obligation of B&F pursuant to a step-in agreement does not create or result in liability to B&F and the State. For example, the bill proposes that title to the revenues from power purchase charges (paid by the customers) and the subsidy for the reserve account after a default by the utility under a power purchase agreement resides with B&F. See section 269-B(g), at page 12, line 8, through page 13, line 2. Additionally, a step-in agreement obligates B&F to make payments to an IPP after a default by the utility under a power purchase agreement. See section 269-B(a) and (b), at page 9, line 15, through page 10, line 21. In all circumstances, we need to ensure that any default or failure to make payments by B&F pursuant to the terms of a step-in agreement does not result in any

recourse by the utility or an IPP to any money of the State other than the revenues derived from power purchase charges and the subsidy for the reserve account collected and on deposit in the trust fund established by B&F.

We respectfully ask the Committee to consider our comments.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
465 S. KING STREET, #103
HONOLULU, HAWAII 96813

LEODOLOFF R. ASUNCION, JR.
CHAIR

NAOMI U. KUWAYE
COMMISSIONER

COLIN A. YOST
COMMISSIONER

Telephone: (808) 586-2020
Facsimile: (808) 586-2066

Website: puc.hawaii.gov
E-mail: puc@hawaii.gov

Testimony of the Public Utilities Commission

To the
Senate Committee on
Ways and Means

February 27, 2025
10:30 a.m.

Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee:

Measure: S.B. No. 1501, S.D. 1
Title: RELATING TO ENERGY.

Position:

The Public Utilities Commission ("Commission") supports this measure and offers the following comments for consideration.

Comments:

The Commission supports the intent of this measure to encourage the continued development of affordable clean energy resources for the benefit of utility customers in the State.

The Commission is aware of the concerns surrounding Independent Power Producer ("IPPs") financing cost increases and market uncertainty created by Hawaiian Electric's non-investment grade credit rating. The Commission closely monitors the Stage 3 Request for Procurement process (Docket No. 2017-0352) and meets regularly with the Independent Observer on the status of all projects. IPPs in their ongoing Power Purchase Agreement ("PPA") negotiations with Hawaiian Electric have sought higher prices than previous rounds to offset their increased financing costs caused by Hawaiian Electric's PPA default risk. Hawaiian Electric in response has sought to find ways to accommodate IPPs to balance ratepayer electricity costs and developer economics. IPPs bidding into the forthcoming Integrated Grid Plan RFP, which is under review by the Commission for approval (Docket No. 2024-0258), will face these same financing cost challenges unless Hawaiian Electric's credit rating improves. This measure may provide a means to reduce the default risk costs imposed on IPPs by their potential lenders.

Furthermore, the Step-in Agreement will ensure that IPPs continue to be paid for the renewable energy they will produce should the electric utility trigger a default. The

Commission is supportive of language that may grant the Department of Budget and Finance the opportunity to agree to a Step-in Agreement with IPPs that have a PPA approved by the Commission. In the worst-case scenario, if IPPs are not paid for their renewable energy, the IPP may shut down operations and would result in a loss of that renewable energy source.

The Commission respectfully defers to the Department of Budget and Finance on the implementation of other portions of the measure.

Thank you for the opportunity to testify on this measure.



Email: communications@ulupono.com

SENATE COMMITTEE ON WAYS AND MEANS
Thursday, February 27, 2025 — 10:30 a.m.

UluPono Initiative supports SB 1501 SD 1, Relating to Energy.

Dear Chair Dela Cruz and Members of the Committee:

My name is Mariah Yoshizu, and I am the Government Affairs Associate 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 SB 1501 SD 1, which allows the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements. This bill is critical to advancing Hawai'i's clean energy goals, ensuring energy reliability, and protecting utility customers from potential disruptions or increased costs.

The following points highlight why this legislation is necessary and beneficial:

1. Facilitating the Transition to Renewable Energy

The bill directly supports Hawai'i's policy goals, including achieving 100% renewable energy by 2045 and advancing a net-negative emissions economy. By providing assurances to independent power project developers and their financiers through a step-in agreement, the bill encourages continued investment in clean energy projects, even amidst the utility's lower credit rating. This will enable Hawai'i to retire aging and costly fossil-fuel plants and replace them with affordable, sustainable alternatives. In addition, this bill is intended to help ratepayers by continuing to support the addition of low-cost renewables and should not act as a financial boon for the utility.

2. Addressing Energy Reliability and Affordability

With many generating units in Hawai'i nearing retirement, the urgency of procuring replacement resources cannot be overstated. A step-in agreement, such as the one proposed, should help to ensure that independent power producers remain confident in the financial viability of their projects. This prevents potential project cancellations or escalated costs due to credit concerns, ultimately protecting customers from issues with reliability and affordability.

3. Providing Financial Stability Amidst Utility Credit Challenges

Following the tragic Maui wildfires, concerns about the financial strength of Hawaiian Electric Company and its subsidiaries have raised risks of increased prices or project

Investing in a Sustainable Hawai'i

cancellations. The proposed step-in agreements allow the State to act as a limited credit backstop, ensuring payment obligations are met. Importantly, these agreements do not constitute contingent liabilities under the State Constitution, protecting public finances while addressing credit concerns.

4. Leveraging Existing Revenue Streams

The bill establishes a dedicated fund, capitalized by on-bill charges, for power purchase agreements, to fulfill State-backed payment obligations. This structure ensures that no additional taxpayer funds are required, as revenue from power purchase charges will be utilized to reimburse the State for any payments made under step-in agreements.

5. Strengthening Energy Security and Diversification

By facilitating the development of local renewable energy resources, this bill reduces Hawai'i's dependence on imported fossil fuels, enhancing energy security and resilience against global market fluctuations.

In conclusion, this bill is a forward-thinking measure that balances the State's renewable energy aspirations with the practical needs of maintaining reliability, affordability, and financial prudence. It provides the necessary assurances to independent power producers to continue developing critical clean energy infrastructure without undue delays or costs. UluPono respectfully urges the committee to pass this bill to secure a sustainable and resilient energy future for Hawai'i.

Thank you for the opportunity to testify.

Respectfully,

Mariah Yoshizu
Government Affairs Associate



Senator Donovan Dela Cruz, Chair
Senator Sharon Moriwaki, Vice Chair
Committee on Ways and Means

Thursday, February 27, 2025; 10:30 a.m.
Conference room 211 & Videoconference

RE: SB 1501 SD1 – Relating to Energy – In Support

Aloha Chair Dela Cruz, Vice Chair Moriwaki and members of the Committee,

My name is Wren Wescoatt, Vice President of Development for Longroad Energy (Longroad), and I am testifying in support of SB 1501 SD1. This bill provides critical support to enable the financing of new renewable energy projects in Hawaii and lower the price of energy for ratepayers.

I have been developing clean energy in Hawai'i for the past 17 years for Longroad and First Wind. Together, our team has developed about half of the utility-scale wind and solar capacity operating in Hawaii today and financed more than \$500 million for construction of local projects – all of which have power contracts with Hawaiian Electric Company (HECO). Hawai'i has been making steady progress toward 100% renewable electricity, but with HECO's current credit rating below investment grade since the Maui fires, it is difficult for energy producers like Longroad to secure financing to fund future solar projects. If HECO is below investment grade, then either the cost to finance the projects will be higher because lenders are taking on more risk – or the State of Hawai'i needs to guaranty the power contracts somehow. This will give banks loaning money to build projects the assurance that the contract is backed by an investment-grade counterparty.

The current bill allows the State to step in and facilitate payments on future HECO power contracts. While this is not as strong as a full guaranty by the State, having the State serve as trustee for payments will give lenders a higher degree of confidence and should enable them to reduce the cost of borrowing. This would decrease the price of energy from solar projects, which is directly passed through to Hawaii's ratepayers.

We support SB 1501 SD1 and ask that you give the measure your favorable consideration.

Mahalo,

A handwritten signature in black ink, appearing to read "Wren W. Wescoatt", written over a horizontal line.

Wren W. Wescoatt
Vice President of Development
wren.wescoatt@longroadenergy.com
808-780-1000

Senator Donovan Dela Cruz, Chair
Senator Sharon Moriwaki, Vice Chair
Committee on Ways and Means

February 27, 2025; 10:30 a.m.
Conference room 211 & Videoconference

RE: SB 1501 SD1 Relating to Energy – In Support

Aloha Chair Dela Cruz, Vice Chair Moriwaki and members of the Committee:

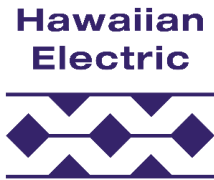
Plus Power appreciates this opportunity to submit testimony in support of SB 1501 SD1, which allows the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements and establishes the Power Purchasing Costs Trust Fund.

There is a need to replace retiring fossil fuel units. SB 1501 SD1 is necessary to procure affordable clean energy resources to replace these units and stabilize the grid.

The Plus Power team is accelerating the deployment of transmission-connected battery energy storage throughout the United States. Plus Power develops, owns, and operates standalone battery energy storage systems that provide capacity, energy, and ancillary services, enabling the rapid integration of renewable generation resources. We now have 7 operating projects, with 1 in Hawaii, 4 in Texas, 2 in Arizona, and 2 more coming online this year in Maine and Massachusetts, totaling over 4000 MWh. Behind those, we have 10 GW of projects in 28 U.S. states and Canada in development.

We ask your favorable consideration in passing this measure.

Brian Duncan
Senior Vice President, Origination & Commercial
Plus Power



SENATE COMMITTEE ON WAYS & MEANS
February 27, 2025, 10:30 a.m., Room 408

Testimony in strong support of SB 1501 SD1

Aloha Chair Dela Cruz, Vice Chair Moriwaki, and members of the Ways & Means Committee:

As partners of Climate Hawai'i, an initiative of the Hawai'i Executive Collaborative (HEC), we strongly support SB 1501 SD1, which will help Hawai'i stay on track to achieve its critical climate and energy security goals. The measure establishes step-in agreements to ensure continuity of payments for large-scale renewable energy producers in the event of an electric utility default. This measure is critical to securing financing for new clean energy projects, accelerating Hawai'i's clean energy transition, and ensuring energy affordability and reliability for all residents.

Why SB 1501 is Critical for Hawai'i's Energy Future

Hawai'i is at a pivotal moment in its energy transition. The state must rapidly replace retiring fossil fuel plants with cost-effective renewable energy projects, yet recent events—such as the devastating Maui fires—have degraded Hawaiian Electric's credit rating, which has significantly increased financing costs and project uncertainty. Without intervention, this could lead to:

- Cancellations and delays of clean energy projects, increasing reliance on costly fossil fuels.
- Higher electricity prices for residents due to expensive financing terms or project terminations.
- Grid reliability risks, particularly as existing power plants age and retire without sufficient replacements.

Key Benefits of SB 1501

This bill addresses financing challenges by establishing step-in agreements that allow the state to ensure continued payments to renewable energy producers in the unlikely event of a utility default. This mechanism:

- Restores investor confidence and enables financing for new solar, wind, and storage projects.
- Accelerates Hawai'i's transition to 100% renewable energy, avoiding unnecessary delays.
- Reduces long-term energy costs by securing lower financing rates and keeping clean energy affordable.
- Enhances energy security and resilience by ensuring new projects are built on schedule.

A Proven, Low-Risk Model for Ensuring Renewable Energy Development

Step-in agreements have been successfully used in other jurisdictions to support energy infrastructure investments. Importantly:

- The State does not assume financial liability beyond revenues already collected from ratepayers for power purchases.
- No taxpayer funds are used—these agreements operate within the existing utility billing framework.
- A dedicated reserve account ensures stability, preventing disruptions even if an electric utility encounters financial difficulties.

The Cost of Inaction

If these policies are not adopted, Hawai'i risks losing critical renewable energy projects at a time when the state cannot afford further delays. Renewable energy producers have already withdrawn projects due to financing challenges, and without step-in agreements, more will follow—jeopardizing our climate goals and forcing residents to bear the burden of higher electricity costs from continued fossil fuel use.

A Smart, Targeted Solution for a Sustainable Future

Senate Bill 1501 provides a measured, financially responsible approach to securing Hawai'i's clean energy transition. By ensuring that renewable energy producers have confidence in their contractual payments, these policies will unlock investment, create local jobs, and accelerate clean energy deployment—all while keeping energy costs stable for Hawai'i's residents and businesses. As Climate Hawai'i partners, we strongly urge the Legislature to pass this policy to protect Hawai'i's energy future and uphold the state's commitment to 100% renewable energy by 2045.

Mahalo for your leadership and the opportunity to testify.

About the Hawai'i Executive Collaborative

The Hawai'i Executive Collaborative (HEC) is a nonprofit organization that serves as a convener and provides backbone support to leaders from different sectors who want to help build a more resilient economy and state. HEC members believe in the power of acting collectively and focus their energies and resources on areas where immediate and systemic changes will benefit Hawai'i and the world. For more information on Climate Hawai'i's real-world, high-impact solutions, please visit climatehawaii.earth.

Climate Hawai'i partners supporting this testimony:

- Hawaiian Electric
- Zephyr
- aio
- Sun Noodle
- County of Kaua'i
- Hua Nani Partners
- Chaminade University
- Manoa Valley Theatre
- Young Brothers
- Blue Planet Foundation
- Bowers + Kubota
- HEI
- Catholic Charities Hawaii
- Elemental Impact
- AES Hawai'i



111 Speen Street, Suite 410
Framingham, MA 01701

P: 508 661 2200
Toll Free: 1-866-AMERESCO

Ameresco.com

TESTIMONY TO THE COMMITTEE ON WAYS AND MEANS

10:30 AM, FEBRUARY 27, 2025

Conference Room 211 & Via Videoconference

SB 1501 SD1

Chair Dela Cruz, Vice Chair Moriwaki, Members of the Committee,

Ameresco **strongly supports** SB 1501 SD1, which allows the State, Office of Budget and Finance to enter into step-in agreements for payment obligations arising under certain power purchase agreements. The bill is essential to ensuring the financing and construction of the critically needed “Stage 3” renewable energy projects that have already been procured by the utility and are now under development.

Ameresco is a leading cleantech integrator and renewable energy asset developer, owner and operator. With 25 years of experience, we have successfully completed energy saving, renewable energy and environmentally responsible projects for commercial, industrial, Federal, State and Local government in Hawai‘i, across the US, Canada and Europe. Ameresco has been a part of the Hawai‘i community for the last 15 years and committed to supporting the goals of clean, reliable and affordable energy. Last year, we completed the Kūpono Solar 42 MW/168 MWh photovoltaic solar and battery storage project in ‘Ewa.

We currently have three additional large-scale renewable energy projects in development on O‘ahu and Maui – a firm energy 99MW Pu‘uloa Energy and 6 MW / 30MWh Pu‘uloa Solar on Oahu and a firm energy 40MW Ūkiu Energy – the success of which hinges off of successful financing for these projects which hinges on strong support via SB1501 SD1.

Background

In January 2023, Hawaiian Electric solicited renewable energy project bids through its “Stage 3” Request for Proposals (RFP). The goal of the RFP was to procure 800-1,200 MW of renewable energy projects that would be placed in service by the end of 2029 (and additional capacity to be placed in service by 2033), which is critical to reliability and resilience. Proposals were submitted to Hawaiian Electric in April of 2023 and projects were awarded in November 2023. Between the time that the proposals were submitted and awarded, however, Hawaiian Electric’s credit rating was significantly downgraded to sub-investment-grade status, making it much more challenging for IPPs to obtain both equity and debt financing for these large renewable projects. Specifically, lenders and equity investors are reluctant to invest in these projects because the fear of what would happen in the event of a Hawaiian Electric bankruptcy – and during a bankruptcy, payments that are due to the IPPs by Hawaiian Electric would be disrupted for several months, or potentially longer, which could in turn lead to IPPs defaulting on their payment obligations to lenders. In other cases, lenders are seeking to charge higher interest rates to IPPs to account for this additional risk which results in non-viable projects.

Several IPPs have already withdrawn their Stage 3 projects. Additionally, many planned Stage 2 projects have also terminated or been delayed. It is in the State's interest to ensure that the remaining and future projects are able to obtain financing and come online – not only to ensure that Hawai'i is able to meet its climate and renewable energy goals, in which these Stage 3 projects play a critical role, but also for the integrity and reliability of the electric grid, and to ensure affordable rates to the ratepayers of Hawai'i that are not tied to volatile fossil fuel prices. Hawaiian Electric's only other current renewable energy procurement is the Integrated Grid Planning (IGP) procurement. However, the IGP procurement has been delayed pending a contested case proceeding before the Public Utilities Commission, just now commencing. There are no other large renewable projects "in the works" beyond the Stage 3 projects.

SB1501 SD1

As currently drafted, SB1501 SD1 will help ensure the financing and construction of Stage 3 projects, because it provides a mechanism for the State to enter into step-in agreements with the IPPs and make payments required under the PPAs. These step-in-agreements will instill greater lender confidence that the payments due under the PPAs will continue to be made even in the event of a Hawaiian Electric bankruptcy. This support from the State allows the projects to be financeable.

Ameresco does note, however, that entering into this step-in agreement must not be optional or discretionary, in order to mitigate the risks of the financiers, which would be in the public interest. We recognize all parties must agree and formally execute the terms of the agreement.

Additionally, setting up a separate reserve fund that exists and is funded prior to any Hawaiian Electric bankruptcy will be critical to ensuring the effectiveness of this legislation. Since these step-in-agreements are not backed by the full faith and credit of the State, lenders will need certainty that there are funds available to support the step-in-agreement payments in the event of bankruptcy. Due to the disruptions that may occur during a bankruptcy, these funds must be set up in advance. For this legislation to be effective in preserving the ability of these projects to move forward, these trust funds are necessary to be in existence and funded prior to any bankruptcy. Ameresco is aware that various parties have suggested changes to the way the funds may be structured, and Ameresco defers to the State and Hawaiian Electric on those nuances.

Thank you for the opportunity to provide this testimony.



February 26, 2025

Via Electronic Submittal

Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair

Thursday, February 27, 2025; 10:30 AM
Conference Room 211 & Videoconference

RE: SB 1501 SD1 – Relating to Energy - Support

Aloha Chair Dela Cruz, Vice Chair Moriwaki, and members of the Committee:

Clearway Energy Group LLC ("Clearway") supports SB 1501 SD1, which allows the State to enter into step-in agreements to ensure continuity of payments under certain power purchase agreements.

Clearway is one of the largest suppliers of renewable energy to Hawaiian Electric and its customers. Clearway owns and operates four solar energy projects on Oahu and has three additional projects under development that were awarded in Hawaiian Electric's Stage 3 Renewable RFP. Our projects provide clean, reliable power to Hawaiian Electric's customers at a fixed price and at a lower cost than electricity from fossil fuel sources.

Hawai'i has an urgent need to add affordable, clean energy generation and storage resources to stabilize the grid and replace aging fossil fuel power plants. To make this possible, the State needs to act to restore the financeability of power purchase agreements with Hawaiian Electric. In October 2024, Clearway and Hawaiian Electric made the difficult decision to end the current round of contract negotiations for the projects originally awarded in the Stage 3 RFP. Because of the utility's financial distress and change in credit since the Maui wildfires, Clearway has determined that it is currently not possible to secure financing at a reasonable cost for projects relying on revenue from Hawaiian Electric. Financing is a significant component of the cost of new electricity generation and storage resources, so if this problem is not resolved, it will increase costs for all ratepayers.

SB 1501 SD1 is intended to address the current barriers to financing by using the State's authority to ensure that the flow of payments due under power purchase agreements will continue uninterrupted, even in the case of a bankruptcy filing or other significant financial disruption to the utility. We are continuing to discuss possible amendments with Hawaiian Electric to ensure that the details of the step-in agreement are structured to best support renewable energy financing. We encourage the Committee to pass this measure.

Thank you for the opportunity to testify on this matter.

Nicola Park
Director, Hawaii
Clearway Energy Group



**Hawaiian
Electric**

TESTIMONY BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

**SB 1501, SD1
Relating to Energy**

Thursday, February 27, 2025
10:30 AM
State Capitol, Conference Room 211

Rebecca Dayhuff Matsushima
Vice President, Resource Procurement
Hawaiian Electric

Dear Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee,

My name is Rebecca Dayhuff Matsushima and I am submitting testimony on behalf of Hawaiian Electric in **strong support** of SB 1501, SD1, Relating to Energy, with proposed amendments.

Hawaiian Electric strongly believes in the benefits that this bill can provide to customers and has been actively working through issues raised by State agencies (the Department of Budget and Finance, the Department of the Attorney General, and the Consumer Advocate) and independent power producers (“IPPs”) so that it can ultimately be successful. To address concerns raised by these stakeholders, Hawaiian Electric would like to respectfully suggest additional improvements to this bill, the majority of which were developed through discussion with State agencies and IPPs, as shown and explained in the attached document. In addition, for ease of review, we have also included a comprehensive redline. We note that many of these changes have already been incorporated into companion bill HB 974 HD1, and some additional edits are provided to address more recent comments.

SB 1501, SD1 would provide significant support to Hawaiian Electric’s customers by helping to avoid higher-cost contracts with IPPs and helping to ensure the successful development of new renewable energy projects, thereby promoting system reliability.

Project developers responding to Hawaiian Electric’s most recent Request for

Proposals have indicated that the company's current sub-investment-grade credit rating raises concerns from their financing partners about the assurance of payments to be made by Hawaiian Electric. As a result, we have seen developers withdraw several awarded projects as, at least in part, unfinanceable, or request, in order to pay higher financing costs, increases to their bid pricing in response to this perceived risk. Both of these outcomes result in detrimental effects to Hawaiian Electric customers.

Canceled projects will impact system reliability. Without new projects, on some islands, there will be less generators than there are today due to mandatory retirements of some existing facilities to comply with environmental regulations. Rolling power outages on O'ahu and Hawai'i Island last year were attributed to unexpected outages of aging generators and insufficient battery energy storage to safely maintain power demands. New generation projects will add much needed renewable energy sources that will help maintain system reliability. If new generators are not added, outage durations could increase to multiple hours or even several days. New projects are necessary to supplement the power supply and replace older fossil fuel generators that have become less reliable over time and may need to be shut down altogether.

Additionally, new renewable energy projects are needed to help meet the State's Renewable Portfolio Standards and greenhouse gas laws. If developers continue to withdraw their projects, or fail to bid into the Hawaiian Electric's future procurements, the State's renewable energy goals, such as 70% and 100% net electricity generation from renewable energy by 2040 and 2045, may be jeopardized.

This bill aims to address these risks for a limited number of developers negotiating power purchase agreements for new projects. The bill provides for the department of budget and finance to enter into a "step-in" agreement to pay those IPPs in the unlikely event that the utility defaults. The department would make those payments using specific revenues collected from utility customers, consistent with existing law. To ensure that sufficient funds are available, this bill also establishes a reserve account funded by a reserve fee. We estimate that a typical 500 kWh residential customer would pay between 8 and 16 cents per month for

about 29 months to fund the reserve account for the Company's Stage 3 projects, with any remaining amount being returned once the utility regains its investment-grade credit rating. This cost is significantly less than the increased costs that customers would otherwise face due to Hawaiian Electric's perceived credit risk. For example, some IPPs have indicated that in the absence of a state step-in agreement, the pricing required for their projects may be 20-30% higher per month over the 20- to 30-year term of their contracts.

Hawaiian Electric believes that the customer benefits provided by this bill far outweigh the costs imposed. Given current conditions, Hawaiian Electric also believes this bill offers the best solution to address IPPs' financing concerns. Accordingly, Hawaiian Electric strongly supports SB 1501, SD1 with proposed amendments. Thank you for this opportunity to submit testimony.

Proposed Amendments to SB 1501, SD1

The proposed amendments emerged from continued discussions with independent power producers ("IPPs") and the State, in particular the Department of Budget and Finance ("department") and the Department of the Attorney General ("AG"). At a broad level, the proposed amendments reflect the following:

- Ensuring adequate and timely payment "as and when due" to IPPs and successful performance of the step-in agreements;
- Limiting recourse to the State, including by expressly identifying the department as the counterparty (as opposed to the State), and making clear that the full faith and credit of the State is not pledged for the step-in agreements;
- Establishing the reserve as a separate account in the trust fund, held by the department and inaccessible to the utility unless otherwise permitted by the department.

Additional edits were made for clarity and consistency purposes. The vast majority of these proposed amendments have been incorporated into companion bill, HB 974 HD1.

I. Legislative Findings

The edits in Paragraphs 1 through 4 are principally for clarity and consistency purposes. The following begins with Paragraphs 5 and 6:

Paragraphs 5–6

The legislature further finds that the public interest ~~could~~ would be served ~~by the State providing limited credit support through if the department of budget and finance enters into "step-in agreements, under"~~ with independent power producers, pursuant to which the ~~State will~~ department of budget and finance would agree to make payments to ~~independent power producers in the event of independent power producers after a default in payment failure~~ by an electric utility. ~~These agreements can~~ make required payments pursuant to the terms of the power purchase agreements. The department of budget and finance's obligation to make payments pursuant to the terms of a step-in agreement is limited solely to the revenues associated with a power purchase agreement subject to a step-in agreement. Neither the full faith and credit of the State, nor any other moneys of the State, will be pledged for any obligations under a step-in agreement. The legislature finds that step-in agreements may provide assurances ~~to independent power producers that prompt and full~~ that payments for purchased power will be made. ~~to independent power producers as and when due by the utility under the covered power purchase agreements.~~ The legislature also finds that the intent of this Act is further served by appointing, authorizing, and empowering the electric utility to serve as the billing, collection, payment, and management agent of the State. ~~The legislature also finds that the State's obligations in connection with step-in agreements do not constitute contingent liabilities of the State pursuant to article VII, section 13, clause 8, of the Hawaii State~~

~~Constitution, because the State will be vested with all ownership of and title to revenues resulting from on-bill charges for power purchase costs, and the full faith and credit of the State will not be pledged for obligations under these step-in agreements. In the event of a default by an electric utility on its payment obligations, these revenues would cover all payment obligations of the State for electric energy and related products. In the absence of default, the electric utility will be authorized to utilize these~~department of budget and finance. Prior to a payment default by the electric utility, the electric utility will be authorized to utilize such revenues to discharge its obligations to pay independent power producers for electric energy and related products. The obligations of the ~~State~~department of budget and finance under this Act are undertaken for a public purpose, namely, the protection of public health, safety, and welfare by supporting the development of clean energy resources that are needed for the reliable provision of electric supply at a reasonable cost.

- (1) Following consultation with the AG, the proposed amendments limit any possible recourse or liabilities to the "State", replace the "State" with the "department of budget of finance"; expressly limit the obligations of the step-in agreement to the revenues from the power purchase charges and reserve fees; and provide that the full faith and credit of the State is *not* pledged, nor are any other moneys of the State pledged, under a step-in agreement.
- (2) The proposed amendments also provide assurances to IPPs by indicating that payments will be made "as and when due" to IPPs under covered power purchase agreements ("PPAs").
- (3) The proposed amendments also delete the paragraph on article VII, section 13, clause 8 of the Hawaii constitution, because that constitutional provision is likely no longer applicable, as the full faith and credit of the State is no longer pledged under step-in agreements.

Purpose of the Act

Therefore, the purpose of this Act is to:

- (1) ~~Allow~~ Require the ~~State~~department of budget and finance to enter into a ~~step-in agreements for payment obligations arising agreement~~ with an independent power producer under ~~new power purchase agreements entered into between an investor owned electric utility and its regulated subsidiaries~~which the department of budget and finance will agree to make required payments to the independent power producers ~~producer~~ after a failure by the electric utility to make required payments pursuant to the terms of a power purchase agreement;
- (2) Establish a trust fund ~~within~~outside the ~~State~~state treasury, that shall be capitalized ~~immediately~~by revenues from a surcharge supporting a reserve account and, in the event of a default ~~to fulfill state-backed payment obligations arising, by revenues~~ from power purchase ~~agreements subject to step charges, in agreements;~~
- ~~(3) Establish that revenues from on-bill charges for each case associated with covered power purchase agreements and accompanying reserves, for the fulfillment of payment obligations arising from the power purchase agreement;~~
- (3) Establish that revenues collected from on-bill charges associated with covered power purchase agreements and revenues from a surcharge supporting a reserve account shall be held in trust by the State, and that independent power producers shall hold a beneficial interest in the revenues and reserves to the extent they are of the amounts owed to such independent power producers under the covered power purchase agreements; and
- (4) Appoint, authorize, and empower ~~an~~the electric utility to serve as the billing, collection, payment, and management agent of the department of budget and finance ~~into implement the service requirements of performing step-in agreements this Act.~~

These proposed amendments principally reflect the following:

For subparagraph 1,

- (1) In consultation with the AG, we proposed edits modifying the language of subparagraph 1 to more clearly describe the nature of the step-in agreement, including identifying the department as the counterparty (as opposed to the "State");
- (2) The proposed edits replace the word "allow" with the word "require" in subparagraph 1, consistent with the language of "the department *shall*" enter into step-in agreements in § 269-B(a).

For subparagraph 2,

- (1) Following suggestions by the AG, we proposed amending the legislation to place the trust fund *outside* of the State treasury in subparagraph (2) to ensure that the fund is utilized only for its intended purposes and to provide further assurances to IPPs.
- (2) Following discussion with the department, we proposed editing subparagraph (2) to ensure revenues from reserve fees are immediately placed in the trust fund, outside of

utility use or control (as described in § 269-E), prior to any default event. As before, the power purchase charges (excluding the reserve fees) capitalize the fund after a default.

Edits to subparagraphs 3 and 4 were made for clarity and consistency purposes.

II. Definitions

These edits were again principally made for clarity and consistency purposes. We identify certain substantive proposed edits below:

"Power purchase charges" means the on-bill charges, excluding reserve fees, authorized by the public utilities commission to be imposed on and collected from all existing and future customers of an electric utility or any successor for power purchase costs, including but not limited to the energy cost recovery clause and the purchased power adjustment clause. ~~"Power purchase charges" do not include any amounts for state and county revenue taxes, including any franchise tax, public service company tax, and public utility commission fee.~~

"Power purchase costs" means costs incurred by an electric utility pursuant to the terms of a power purchase agreement, including ~~but not limited to~~ without limitation, costs such as termination payments payable by an electric utility in connection with the termination of a power purchase agreement as a result of a default by ~~the~~ such electric utility. ~~thereunder.~~ "Power purchase costs" ~~also~~ include, without limitation, all categories of costs recoverable under the energy cost recovery clause and the purchased power adjustment clause under ~~its~~ their respective tariffs in effect on July 1, 2025.

"Purchased power adjustment clause" means the provision, or other equivalent, in an electric utility's rate schedules that allows the electric utility to recover expenses and related taxes for non-energy costs of power purchased under a power purchase agreement.

"Reserve fees" means the surcharges described in section 269-E(a).

"Revenue" means moneys from power purchase charges and reserve fees net of any applicable taxes or government fees, including but not limited to the franchise tax, public service company tax, and public utility commission fee.

"Step-in agreement" means a contract by which the ~~State~~ department undertakes ~~an~~ the obligation of ~~prompt and full~~ payment for power purchase costs owed to an obligee ~~as and when due~~ by an electric utility under a power purchase agreement following a default, as described in section 269-B(a); provided that the department's payment obligation under such step-in agreement is limited solely to the revenues from power purchase charges and reserve fees collected in connection with covered power purchase agreements.

(1) Our proposed edits independently define reserve fees and power purchase charges, and define the term "power purchase charges" to exclude "reserve fees." This edit followed from the suggestion of the department to segregate the reserve fees and ensure that the utility could not independently draw on or utilize revenue of reserve fees.

(2) We proposed defining "revenue" as excluding all taxes or government fees, rather than including that exclusion within the definition of "power purchase charges," given the above edit separating "reserve fees" and "power purchase charges".

(3) For the definition of a step-in agreement, and following discussion with the AG, we proposed making clear that the payment obligation is limited solely to the revenues from power purchase charges and reserve fees of power purchase agreements.

III. § 269-B (Step-in agreements)

(a) The department shall enter into a step-in agreement with an obligee that requires the department to make ~~prompt and full~~ payments for power purchase costs owed by an electric utility to the obligee in the event of a default. ~~Notwithstanding any other provision in this part to the contrary, a step-in agreement shall also obligate the department to pay claims of the obligee from moneys in the fund arising out of the termination of a covered power purchase agreement by the electric utility under bankruptcy law. Upon~~ Pursuant to such step-in agreement and upon the default, the department shall make payments to the obligee for power purchase costs with moneys from the fund as and when due by the electric utility under the covered power purchase agreement. ~~The; provided that any such~~ step-in agreement shall ~~not be an~~ provide that the department's payment obligation ~~for which~~ thereunder shall be solely limited to the revenues from power purchase charges and reserve fees collected in connection with covered power purchase agreements. Each step-in agreement shall include a clause stating that neither the full faith and credit of the State ~~is nor~~ any other moneys of the State will be pledged, ~~and an~~ for any obligations pursuant to the terms of the step-in agreement. An obligee of a covered power purchase agreement shall have no claim or lien on any ~~revenues or~~ moneys of the State, except for those revenues from the power purchase charges and reserve fees attributable to ~~the covered power purchase agreement~~ covered power purchase agreements. An ~~obligee~~ shall remain entitled to all payments for power purchase costs owed under the covered power purchase agreement, whether or not the revenues from power purchase charges attributable to the covered power purchase agreement are timely collected. Notwithstanding anything to the contrary in this part, a step-in agreement shall also obligate the department to pay claims of the obligee from moneys in the fund arising out of termination of a power purchase agreement by the electric utility under bankruptcy law.

These edits are principally for clarity and consistency purposes, with two noteworthy changes:

(1) Consistent with other edits suggested by the AG, our proposed amendments expressly indicate that the payment obligation is solely limited to revenues from power purchase charges and reserve fees, and that each step-in agreement shall contain a clause indicating that there is no recourse to other moneys of the State.

(2) Following suggestion from the IPPs, our proposed amendments include language that the IPP shall remain entitled to all payments owed under power purchase agreements, even if the revenues for any particular month were not timely collected —

that is, the IPPs remain entitled to be made whole if revenues arrive later than expected or are delayed, perhaps due to under-recovery in any particular month.

(3) Several IPPs have indicated the need for recovery of termination costs to address the concerns of financing parties. To be clear, Hawaiian Electric does not have any intention of ever terminating these power purchase agreements, and therefore it is highly unlikely that any termination fees will be paid. However, for the purposes of ensuring lowest-cost PPAs, we have proposed some modifications to the end of this subsection, agreed to by the IPPs, to address this issue.

(d) The step-in agreement shall terminate when the credit rating of the electric utility or its successor achieves investment grade status or by express agreement of the obligee, department, and electric utility. Upon termination of a step-in agreement, the department shall have no obligation to the electric utility or the obligee upon a default by the electric utility.

This proposed edit, following a suggestion by the department, allows for termination of the step-in agreement upon the agreement of the department and the utility, in addition to agreement of the obligee.

(e) Following a default of a covered power purchase agreement and any payment by the department, the electric utility, ~~within its sole discretion~~through agreement with all obligees of its covered power purchase agreements, may elect to resume payments for power purchase costs owed by the electric utility, regardless of the credit rating of the electric utility at that time, in which case the electric utility ~~may use the revenue from power purchase charges as specified~~shall cease to turn over revenues from power purchase charges collected in connection with the covered power purchase agreement to the power purchase costs trust fund as described in section 269-C(a), and may use the revenues from power purchase charges through the vesting of title in the electric utility as described in subsection (h); provided that the payments shall not terminate the step-in agreement, which shall remain in effect until terminated pursuant to subsection (d), and the department shall remain obligated to pay the obligee upon a subsequent ~~payment~~ default by the electric utility.

This subsection (e) addresses the case in which the utility assumes payments of covered power purchase agreements in bankruptcy. Following discussion with the IPPs, the proposed amendments allow for such a possibility only upon agreement of all obligees of power purchase agreements.

(g) As consideration for the ~~State~~department entering into the step-in agreement, the electric utility or its successor shall enter into an agreement to assign and transfer ~~any ownership in and~~ title to the ~~revenue~~revenues from power purchase charges and reserve fees attributable to the covered power purchase agreement to the department, ~~and, under the agreement, the department shall be deemed to be the sole holder~~held in trust ~~of all ownership and title to the revenue~~ for the benefit of the obligees under the covered power purchase agreements to the extent of the ~~obliges are~~amounts owed. ~~to such obligees. The assignment and transfer of title to the revenues by the electric utility shall be made and remain for the term of the step-in agreement free and clear of any prior lien, pledge, security interest, or encumbrance of any kind, and shall be exempt from section 269-19. The revenue~~revenues shall not be subject to appropriation for any other purpose. The ~~revenue, if held in a depository other than the state treasury,~~revenues shall be exempt from the requirements of chapters 36 and 38. The electric utility or its successor shall be and remain at all times, even upon the occurrence and during the continuance of a default by the electric utility or its successor, obligated to bill and collect the power purchase charges and ~~to~~reserve fees and manage the ~~revenue attributable to the agreement~~associated revenues as an agent for the department to effectuate the purposes of this part.

These proposed amendments, suggested by the IPPs, ensure that all transfer of title of revenues to the department shall be free of encumbrances, and makes clear that the utility shall continue to bill charges and reserve fees after default as an agent of the department. The remainder are for clarity and consistency purposes.

(h) ~~Except in~~ Prior to default or an entry of an order of relief against with respect to the ~~case of any bankruptcy filing by an~~ electric utility under Title 11 of the United States Code, if any payment obligation of the electric utility under a covered power purchase agreement for power purchase costs becomes owed and due, any ~~ownership of or~~ title held by the department in trust to the ~~revenue~~revenues from power purchase charges for the payment obligation owed and due shall divest from the department and vest in the electric utility or its successor at the time the payment by the electric utility or its successor is made to the obligee. ~~Any vesting of revenues to the electric utility when at the time of payment obligations are owed and due may be made without appropriation or allotment by the legislature, or allotment. The department may~~ shall not otherwise assign, sell, or transfer any ~~ownership of, or~~ title to, or any claim or right to, the ~~revenue~~revenues from power purchase charges. ~~or reserve fees.~~

The proposed amendments at the beginning of this subsection (h), developed through discussion with the IPPs, ensure greater precision as to the reference to an order of relief under bankruptcy law. The remainder are for clarity and consistency purposes.

(i) — To meet the requirements of the State and the public utilities commission as ~~it pertains~~ they pertain to electric reliability, energy security, and energy diversification under this chapter and any rules adopted pursuant thereto, ~~an~~ the electric utility shall ensure that it maintains sufficient availability of electric energy and related products, to the extent provided by an ~~obligee~~ in accordance with a covered power purchase agreement. — The ~~department~~ public utilities commission shall exercise its regulatory powers to ensure that ~~an~~ the electric utility complies with its obligations under the covered power purchase ~~agreements~~ agreement.

These proposed amendments, suggested by the AG, replace the department with the public utilities commission, as the commission possesses regulatory power to ensure compliance with the terms of PPAs.

(j) Notwithstanding any other law to the contrary, ~~an~~ the electric utility shall file with the public utilities commission, and the public utilities commission shall allow to become effective, monthly rate adjustments provided under the energy cost recovery clause and purchased power adjustment clause to establish or adjust power purchase charges in a manner designed to:

(1) Generate sufficient ~~revenue~~ revenues to timely and fully pay amounts when owed and due under covered power purchase agreements; ~~and~~

(2) Ensure that in no event shall revenues fall below the amounts owed and due under covered power purchase agreements by a sum that exceeds the amounts in the reserve account established under section 269-E-~~;~~ and

(3) Recover any applicable taxes and government fees and any incremental administrative costs of the electric utility or the department incurred to implement the requirements of this part.

To achieve the objectives established pursuant to this subsection, unless the public utilities commission otherwise directs, the electric utility may retain ~~revenue~~ revenues collected from power purchase charges in excess of amounts owed and due under the covered power purchase ~~agreement.~~ agreements. The obligations of the electric utility and of the public utilities commission under this section shall survive any default by the electric utility and shall terminate only upon the termination of the step-in agreement as provided in subsection (d).

These proposed amendments ensure recovery of taxes and fees and administrative costs of the electric utility or department, which were unaccounted for in the prior version of the legislation.

(k) If the electric utility fails to timely file any submission as described in subsection (j), the department shall promptly file, or direct the electric utility to promptly file pursuant to section 269-F(a), and the public utilities commission shall allow to become effective, a substitute submission as if the submission had been filed by the electric utility under subsection (j). The electric utility shall implement the power purchase charges in the substitute submission from the department.

Because the department may not be positioned to timely file a monthly rate submission if the utility fails to do so, this proposed amendment allows the department to direct the utility to file such submission, pursuant to the agency agreement that the department has entered into with the utility. This proposed amendment was in response to concerns expressed by the department on the companion House bill, HB 974 HD1.

IV. § 269-C (Default of electric utility; successor requirements)

(a) ~~If~~ Within two business days after the ~~obligee~~ provides notice to the department of a default of a covered power purchase agreement, the department shall provide the electric utility notice of the default. Two days after the electric utility receives the notice, the electric utility shall turn over all revenues from the power purchase charges and reserve fees arising from any covered power purchase agreements identified in the notice, regardless of when collected, then in its possession, and, subject to section 269-B(e), all future revenues from the power purchase charges and reserve fees thereafter collected, ~~to the fund as directed by the department; provided that the~~ established pursuant to section 269-D(a). These amounts shall include all revenues received by the electric utility after a default for such power purchase charges and reserve fees billed before the default ~~that were intended to be used to pay power purchase costs arising from the covered power purchase agreement.~~ The department shall use the ~~revenue~~ revenues collected from the power purchase charges and reserve fees, including the revenues turned over, only in the order as follows:

- (1) To pay power purchase costs pursuant to ~~a step-in agreement~~ agreements, subject to the appointment, authorization, and empowerment of the electric utility as an agent as described in section 269-F(e); and ~~and~~
- ~~(2) To implement a rate credit to customers for revenue~~ revenues in excess of amounts owed under ~~the~~ covered power purchase ~~agreement~~ agreements,
- (2) To recover any incremental administrative costs of the electric utility or the department incurred to implement the requirements of this part; and
- (3) To implement a rate credit to customers.

These proposed amendments were developed through discussion with the IPPs.

(1) The two-day deadline ensures timely enforcement of the step-in agreement through prompt performance by the utility, and the department, of their obligations.

(2) The use-of-revenues waterfall ensures that payment of power purchase costs is prioritized first from revenues, before recovery of incremental administrative costs, with a rate credit provided to customers for the remainder. This further provides assurances to IPPs and financing parties.

(e) If the ~~credit rating of the electric utility or its successor achieves investment grade status,~~ step-in agreement is terminated as described in section 269-B(d), then by operation of law, any ~~ownership of and~~ title to the ~~revenue~~ revenues from power purchase charges and reserve fees attributable to the covered power purchase agreement shall immediately ~~divest from the department and vest in the electric utility or its successor;~~ cease to be held in trust and the electric utility or its successor shall thereafter be the sole ~~owner and~~ holder of title or beneficial and equitable interest in, and any claim or right to, the revenue, and the obligation of the electric utility or its successor to bill and collect the power purchase charges and reserve fees and manage the ~~revenue~~ revenues as an agent for the department, and, if applicable, to remit the collected ~~revenue~~ revenues to the fund, shall terminate.

These proposed amendments were made for consistency purposes with the remainder of the statute.

V. § 269-D (Power purchase costs trust fund)

(a) There is established ~~in~~ outside the state treasury the power purchase costs trust fund ~~into which to be administered by the department. The electric utility shall be deposited~~ deposit into the fund all ~~proceeds of the power~~ revenues collected in connection with covered power purchase agreements from

(1) Power purchase charges to be paid in the event of a default of a covered power purchase agreement by the electric utility; agreements and

(2) Reserve fees.

(b) Moneys in the fund shall be ~~administered and~~ held by the department in trust for the benefit of obligees of covered power purchase agreements to the extent ~~the obligees are owed of the amounts owed to such obligees.~~ The department's payments from the fund shall be made without appropriation or allotment as provided in section 37-40.

(c) If the ~~credit rating of the electric utility or its successor achieves investment grade status,~~ step-in agreement is terminated as described in section 269-B(d), the fund shall cease to receive any ~~revenue~~ revenues from the power purchase charges collected by ~~that the~~ electric utility or its successor and the department shall pay to the electric utility or its successor the remainder of any moneys in the fund, ~~provided that the~~ attributable to power purchase charges. Those moneys ~~in the fund~~ shall be considered ~~revenue~~ revenues of the electric utility or its successor.

(d) The department shall be under no obligation to make payment to any obligee ~~if in excess of~~ the moneys in the fund ~~are depleted.~~ Any default or failure by the department to make payments pursuant to the terms of a step-in agreement under this part shall not result in any recourse by the electric utility or obligee to any funds of the State other than the revenues derived from power purchase charges and the subsidy surcharge for the reserve account collected and on deposit in the fund.

These proposed amendments ensure consistency with those proposed edits already mentioned: placement of the fund outside the treasury, ensuring department administration over the fund, and making clear that payments from the fund are made without appropriation or allotment.

We proposed one edit to § 269-D(d), which was added in SD1. We propose amending the language to "in excess of". This is to avoid a reading of the provision that the department's obligation terminates if there is temporarily no money in the fund.

VI § 269-E (Reserve account; establishment)

(a) By August 1, 2025, the public utilities commission shall authorize ~~a surcharge~~surcharges proposed by an electric utility, referred to as ~~the power purchase costs reserve fee, the revenue from which shall be accorded the same treatment as revenue from power purchase charges as described in section 269-B(g).~~ The power purchase costs reserve feereserve fees.

Reserve fees may be included in the purchased power adjustment clause on customer bills. The department shall establish and maintain a separate account to accept and account for revenues from reserve fees as part of the fund established under section 269-D, and the electric utility shall promptly deposit all revenues collected from reserve fees into the account. The electric utility shall not otherwise assign, sell, or transfer any title to, or any claim or right to, the revenues from reserve fees, except as provided under this part. The electric utility shall not access the reserve account or utilize the revenues deposited therein, except as directed by the department pursuant to section 269-F(e).

(b) ~~The power purchase costs reserve fee~~ Reserve fees shall be collected and maintained to establish a reserve account in an amount not to exceed the total of fifteen per cent of the forecasted monthly power purchase costs of all covered power purchase agreements, ~~plus an amount sufficient to recover costs related to administration of the reserve account and any applicable taxes and fees.~~

(c) ~~In the event of default pursuant to section 269-C(a), all previously collected revenues and all future revenues from the power purchase costs reserve fee shall be accorded the same treatment as revenues from power purchase charges as described in section 269-C.~~

~~(d) Notwithstanding subsection (c), if the credit rating of the electric utility or its successor achieves investment grade status and If the step-in agreement terminates pursuant to section 269-B(d), all reserve fees collected in connection with the covered power purchase agreement shall cease to be collected, and all moneys remaining in the fund attributable to the reserve collected from the power purchase costs reserve fee~~ fees shall be returned in full, together with any associated interest earned, to customers through a rate credit.

These proposed amendments resulted from a proposal of the department as to treatment of the reserve. The language establishes that the reserve account is established and maintained by the department; that the electric utility may only deposit the revenues from the reserve fees in the department's account; that the utility cannot

otherwise transfer or assign or sell those reserve fees; and that the utility then cannot access the account or use the revenues within unless directed to do so, as agent by the department.

The proposed edit to § 269-E(b) allows the department to recover the administrative costs of maintaining the reserve account.

As a result, the language of prior § 269-E(c) is unnecessary, because all revenues from the reserve fees are immediately turned over to the account and held by the department. The proposed edits to former § 269-E(d) are intended to ensure that reserve fees will cease to be collected upon termination of the agreement and refunded in full to customers.

VII § 269-F (Electric Utility; agent of the department)

(a) To implement the requirements of this part, the department ~~may~~ shall contract with an electric utility or its successor to act as an agent of the department to provide billing, collection, payment, management, and other related services ~~on terms and conditions that reasonably compensate the electric utility or its successor for its incremental cost to provide services, and adequately secure payment to the department.~~ |

This proposed edit, from "may" to "shall" requires the department to contract with the utility for agency services, given the background and experience of the utility in billing, collection, and payment services. This edit was proposed by the IPPs. The remainder of the subsection was struck because of the additional proposed language expressly addressing administrative costs.

The remainder of the edits in Section 269-F were largely for consistency with the edits previously described, and for clarity.

A BILL FOR AN ACT

RELATING TO ENERGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that it is imperative to
2 enable the development of affordable clean energy resources for
3 the benefit of utility customers in the State. Many existing
4 generating units in ~~Hawaii~~the State will need to be retired in
5 the next few years due to obsolescence and environmental
6 permitting requirements. The impending retirement of these
7 units makes it urgent to obtain replacement resources, without
8 which the reliability of ~~electrical~~electric supplies in the
9 State will be at risk. In addition, continued reliance on
10 these aging units, even if feasible, would result in increased
11 costs for utility customers and continued reliance on fossil
12 fuels, contrary to the State's policy to transition to
13 renewable, non-carbon-emitting resources.

14 The procurement of replacement clean energy resources by a
15 certain investor-owned electric utility and its electric
16 utility subsidiaries is ongoing in its ~~stage~~Stage 3 request for
17 proposals and further anticipated in its first ~~integrated-grid~~
18 ~~planning~~Integrated Grid Planning request for proposals. These

1 requests for proposals ~~implement~~set forth energy plans that
2 ~~are~~have been developed through extensive engagement with local
3 stakeholders and communities and reviewed and approved by the
4 public utilities commission. The legislature finds that
5 successful procurement of clean energy resources is in the
6 public interest and necessary to avoid significant detrimental
7 reliability and affordability impacts to electric utility
8 customers.

9 The legislature ~~also~~further finds that the development of
10 clean energy resources by independent power producers is
11 essential to achieve the State's goals of one hundred per cent
12 net electricity sales from renewable sources by 2045, a zero
13 emissions economy by 2045, and greater energy security and
14 energy diversification, as established by the Hawaii ~~State~~
15 ~~Planning Act~~state planning act and existing public utility
16 laws.

17 The legislature ~~further~~also finds that continued
18 development of clean energy resources requires adequate
19 assurances ~~to independent power producers that prompt and~~
20 ~~full~~that payments for purchased power will be made,
21 ~~irrespective of~~ to independent power producers as and when due
22 by the ~~financial strength of an electric utility.~~ under power
23 purchase agreements. The current sub-investment-grade status
24 of a certain investor-owned electric utility and its

1 subsidiaries, arising from the tragic events that occurred in
2 the 2023 Maui wildfires, has led independent power producers,
3 and those who would otherwise finance renewable energy
4 projects, to raise concerns about the reliability of payment by
5 the utility and its subsidiaries under ~~new~~ power purchase
6 agreements. ~~—~~ procured through the Stage 3 and Integrated Grid
7 Planning requests for proposals. Those concerns may cause
8 independent power producers to cancel renewable energy projects
9 or increase the prices they would charge for deliveries to
10 address this perceived credit risk. Either outcome would be
11 contrary to the interests of electric utility customers in the
12 State.

13 The legislature further finds that the public interest
14 ~~could~~would be served ~~by the State providing limited credit~~
15 ~~support through~~ if the department of budget and finance enters
16 into "step-in agreements, ~~under~~" with independent power
17 producers, pursuant to which the ~~State will~~ department of budget
18 and finance would agree to make payments to ~~independent power~~
19 ~~producers in the event of~~ independent power producers after a
20 ~~default in payment~~ failure by an electric utility. ~~These~~
21 ~~agreements can~~ to make required payments pursuant to the terms
22 of the power purchase agreements. The department of budget and
23 finance's obligation to make payments pursuant to the terms of
24 a step-in agreement is limited solely to the revenues

1 associated with a power purchase agreement subject to a step-in
2 agreement. Neither the full faith and credit of the State, nor
3 any other moneys of the State, will be pledged for any
4 obligations under a step-in agreement.

5 The legislature finds that step-in agreements may provide
6 assurances ~~to independent power producers that prompt and full~~
7 ~~that~~ payments for purchased power will be made. to independent
8 power producers as and when due by the utility under the covered
9 power purchase agreements. The legislature also finds that the
10 intent of this Act is further served by appointing, authorizing,
11 and empowering the electric utility to serve as the billing,
12 collection, payment, and management agent of the ~~State.~~

13 ~~—— The legislature also finds that the State's~~
14 ~~obligations in connection with step-in agreements do not~~
15 ~~constitute contingent liabilities of the State pursuant to~~
16 ~~article VII, section 13, clause 8, of the Hawaii State~~
17 ~~Constitution, because the State will be vested with all~~
18 ~~ownership of and title to revenues resulting from on-bill~~
19 ~~charges for power purchase costs, and the full faith and credit~~
20 ~~of the State will not be pledged for obligations under these~~
21 ~~step-in agreements. In the event of a default by an electric~~
22 ~~utility on its payment obligations, these revenues would cover~~
23 ~~all payment obligations of the State for electric energy and~~
24 ~~related products. In the absence of default, the electric~~

1 ~~utility will be authorized to utilize these~~ department of budget
2 and finance. Prior to a payment default by the electric
3 utility, the electric utility will be authorized to utilize
4 such revenues to discharge its obligations to pay independent
5 power producers for electric energy and related products. The
6 obligations of the ~~State~~ department of budget and finance under
7 this Act are undertaken for a public purpose, namely, the
8 protection of public health, safety, and welfare by supporting
9 the development of clean energy resources that are needed for
10 the reliable provision of electric supply at a reasonable cost.

11 Therefore, the purpose of this Act is to:

12 (1) ~~—Allow~~ Require the ~~State~~ department of budget and
13 finance to enter into a step-in ~~agreements for payment~~
14 ~~obligations arising~~ agreement with an independent power
15 producer under ~~new power purchase agreements entered into~~
16 ~~between an investor owned electric utility and its regulated~~
17 ~~subsidiaries~~ which the department of budget and finance will
18 agree to make required payments to the independent power
19 ~~producers~~ producer after a failure by the electric utility to
20 make required payments pursuant to the terms of a power
21 purchase agreement;
22 (2) Establish a trust fund ~~within~~ outside the ~~State~~ state
23 treasury, that shall be capitalized ~~immediately~~ by revenues from
24 a surcharge supporting a reserve account and, in the event of a

default ~~to fulfill state-backed payment obligations arising, by~~
revenues from power purchase ~~agreements subject to step~~ charges,
in ~~agreements,~~

~~— (3) Establish that revenues from on-bill charges~~
~~for each case associated with~~ covered power purchase agreements
~~and accompanying reserves,~~ for the fulfillment of payment
obligations arising from the power purchase agreement;

(3) Establish that revenues collected from on-bill charges
associated with covered power purchase agreements and revenues
from a surcharge supporting a reserve account shall be held in
trust by the State, and that independent power producers shall
hold a beneficial interest in the revenues ~~and reserves~~ to the
extent ~~they are~~ of the amounts owed to such independent power
producers under the covered power purchase agreements; and

(4) Appoint, authorize, and empower ~~an~~ the electric utility
to serve as the billing, collection, payment, and management
agent of the department of budget and finance ~~into~~ to implement
the ~~service~~ requirements of ~~performing step-in agreements~~ this
Act.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is
amended by adding a new part to be appropriately designated and
to read as follows:

"PART. STEP-IN AGREEMENTS COVERING POWER PURCHASE COSTS

§ 269-A Definitions. As used in this part:

1 "Covered power purchase agreement" means a power purchase
2 agreement that is subject to a step-in agreement.

3 "Default" means the failure by an electric utility to pay
4 power purchase costs as and when due to an obligee under a
5 covered power purchase agreement, after the expiration of any
6 applicable grace or cure periods and extensions thereto.

7 "Default" does not mean a bankruptcy filing by an electric
8 utility.

9 "Department" means the department of budget and finance
10 or any successor by law.

11 "Electric utility" means a public utility that produces,
12 conveys, transmits, delivers, or furnishes electric power.

13 "Energy cost recovery clause" means the provision, or
14 other equivalent, in an electric utility's rate schedules that
15 allows the electric utility to recover its costs of fuel,
16 expenses, and related taxes, for energy costs of power
17 purchased under a power purchase agreement.

18 "Fund" means the power purchase costs trust fund
19 established pursuant to section 269-D.

20 "Investment grade status" means a credit rating for the
21 electric utility's senior unsecured long-term debt obligations
22 or an ~~issued~~issuer credit rating for the electric utility~~(,~~, in
23 each case, ~~not supported by~~without regard for third~~-~~party

credit enhancements~~),~~ , from at least two out of ~~the~~ three of the following:

(1) ~~At least~~ , BBB- or higher ~~from~~ for S&P Global Ratings, or any successor by law;

(2) ~~At least~~ , BAA3 or higher ~~from~~ by Moody's Investor Services, Inc., or any successor by law; or

(3) ~~At least~~ , BBB- or higher ~~from~~ by Fitch Ratings, Inc., or any successor by law.

"Obligee" means any user, owner, or operator of the Hawaii electric system that is owed payment of power purchase costs by the electric utility under a power purchase agreement.

"Power purchase agreement" means a contract between an electric utility and a user, owner, or operator of the Hawaii electric system, approved by the public utilities commission, pursuant to which the electric utility agrees to purchase, and the user, owner, or operator of the Hawaii electric system agrees to sell, electric energy and related products produced by plants or facilities that have not provided, sold, or transmitted electricity to the electric utility before July 1, 2025.

"Power purchase charges" means the on-bill charges~~,~~ , excluding reserve fees, authorized by the public utilities commission to be imposed on and collected from all existing and future customers of an electric utility or any successor for

1 power purchase costs, including but not limited to the energy
2 cost recovery clause and the purchased power adjustment
3 clause. ~~"Power purchase charges" do not include any amounts~~
4 ~~for state and county revenue taxes, including any franchise~~
5 ~~tax, public service company tax, and public utility commission~~
6 ~~fee.~~

7 "Power purchase costs" means costs incurred by an electric
8 utility pursuant to the terms of a power purchase agreement,
9 including ~~but not limited to~~ without limitation, costs such as
10 termination payments payable by an electric utility in
11 connection with the termination of a power purchase agreement
12 as a result of a default by ~~the~~ such electric
13 utility. ~~thereunder.~~ "Power purchase costs" ~~also~~ include,
14 without limitation, all categories of costs recoverable under
15 the energy cost recovery clause and the purchased power
16 adjustment clause under ~~its~~ their respective tariffs in effect
17 on July 1, 2025.

18 "Purchased power adjustment clause" means the provision,
19 or other equivalent, in an electric utility's rate schedules
20 that allows the electric utility to recover expenses and
21 related taxes for non-energy costs of power purchased under a
22 power purchase agreement.

23 "Reserve fees" means the surcharges described in section
24 269-E(a).

1 "Revenue" means moneys from power purchase charges and
2 reserve fees net of any applicable taxes or government fees,
3 including but not limited to the franchise tax, public service
4 company tax, and public utility commission fee.

5 "Step-in agreement" means a contract by which the
6 ~~State~~department undertakes ~~an~~the obligation of ~~prompt and full~~
7 payment for power purchase costs owed to an obligee as and when
8 due by an electric utility under a power purchase agreement
9 following a default, as described in section 269-B(a); provided
10 that the department's payment obligation under such step-in
11 agreement is limited solely to the revenues from power purchase
12 charges and reserve fees collected in connection with covered
13 power purchase agreements.

14 "User, owner, or operator of the Hawaii electric system"
15 has the same meaning as ~~defined~~ in section 269-141.

16 **§ 269-B Step-in agreements**

17 (a) The department shall enter into a step-in agreement
18 with an obligee that requires the department to make ~~prompt and~~
19 ~~full~~ payments for power purchase costs owed by an electric
20 utility to the obligee in the event of a
21 default. ~~Notwithstanding any other provision in this part to~~
22 ~~the contrary, a step-in agreement shall also obligate the~~
23 ~~department to pay claims of the obligee from moneys in the fund~~
24 ~~arising out of the termination of a covered power purchase~~

~~agreement by the electric utility under bankruptcy law. Upon~~
Pursuant to such step-in agreement and upon the default, the
department shall make payments to the obligee for power
purchase costs with moneys from the fund as and when due by the
electric utility under the covered power purchase
agreement. ~~The;~~ provided that any such step-in agreement shall
~~not be an~~ provide that the department's payment obligation ~~for~~
~~which~~ thereunder shall be solely limited to the revenues from
power purchase charges and reserve fees collected in connection
with covered power purchase agreements. Each step-in agreement
shall include a clause stating that neither the full faith and
credit of the State ~~is~~ nor any other moneys of the State will be
pledged, ~~and an~~ for any obligations pursuant to the terms of
the step-in agreement. An obligee of a covered power purchase
agreement shall have no claim or lien on any ~~revenues or~~ moneys
of the State, except for those revenues from the power purchase
charges and reserve fees attributable to ~~the covered power~~
~~purchase agreement~~ covered power purchase agreements. An
obligee shall remain entitled to all payments for power
purchase costs owed under the covered power purchase agreement,
whether or not the revenues from power purchase charges
attributable to the covered power purchase agreement are timely
collected. Notwithstanding anything to the contrary in this
part, a step-in agreement shall also obligate the department to

1 pay claims of the obligee from moneys in the fund arising out
2 of termination of a power purchase agreement by the electric
3 utility under bankruptcy law.

4 **(b)** The department shall enter into a step-in agreement
5 only if the power purchase agreement subject to the step-in
6 agreement arises from the ~~stage~~Stage 3 request for proposals
7 under docket number 2017-0352 before the public utilities
8 commission or the first ~~integrated grid planning~~Integrated Grid
9 Planning request for proposals issued under docket number 2024-
10 0258 before the public utilities commission. The department
11 shall enter into a step-in agreement when the power purchase
12 agreement subject to the step-in agreement is executed, or if
13 the power purchase agreement has already been executed as of
14 July 1, 2025, as soon as reasonably possible.

15 ~~(c) — Payment by~~ (c) The payment obligation of the
16 department under a step-in agreement shall commence not later
17 than two days after the date of a notice from the department to
18 the electric utility pursuant to section 269-C(a).

19 **(d)** The step-in agreement shall terminate when the credit
20 rating of the electric utility or its successor achieves
21 investment grade status or by express agreement of the obligee,
22 department, and electric utility. Upon termination of a step-
23 in agreement, the department shall have no obligation to the

electric utility or the obligee upon a default by the electric utility.

(e) Following a default of a covered power purchase agreement and any payment by the department, the electric utility, ~~within its sole discretion~~ through agreement with all obligees of its covered power purchase agreements, may elect to resume payments for power purchase costs owed by the electric utility, regardless of the credit rating of the electric utility at that time, in which case the electric utility ~~may use the revenue from power purchase charges as specified~~ shall cease to turn over revenues from power purchase charges collected in connection with the covered power purchase agreement to the power purchase costs trust fund as described in section 269-C(a), and may use the revenues from power purchase charges through the vesting of title in the electric utility as described in subsection (h); provided that the payments shall not terminate the step-in agreement, which shall remain in effect until terminated pursuant to subsection (d), and the department shall remain obligated to pay the obligee upon a subsequent ~~payment~~ default by the electric utility.

(f) The department may impose other conditions, and may include other terms, in a step-in agreement that ~~the department~~ it deems necessary to implement the requirements of this part; provided that the conditions and terms shall not

adversely affect the obligation of the department to make prompt and full payments for power purchase costs owed by an electric utility to ~~an~~the obligee as and when due ~~to~~in the event of a default as required ~~under subsection~~by section 269-B(a) or otherwise be inconsistent with the covered power purchase agreement.

(g) As consideration for the ~~State~~department entering into the step-~~in~~in agreement, the electric utility or its successor shall enter into an agreement to assign and transfer ~~any ownership in and~~ title to the ~~revenue~~revenues from power purchase charges and reserve fees attributable to the covered power purchase agreement to the department, ~~and, under the agreement, the department shall be deemed to be the sole holder~~held in trust ~~of all ownership and title to the revenue~~ for the benefit of the obligees under the covered power purchase agreements to the extent of the ~~obliges are~~amounts owed. to such obligees. The assignment and transfer of title to the revenues by the electric utility shall be made and remain for the term of the step-in agreement free and clear of any prior lien, pledge, security interest, or encumbrance of any kind, and shall be exempt from section 269-19. The ~~revenue~~revenues shall not be subject to appropriation for any other purpose. The ~~revenue, if held in a depository other than the state treasury,~~revenues shall be exempt from the

1 requirements of chapters 36 and 38. The electric utility or
2 its successor shall be and remain at all times, even upon the
3 occurrence and during the continuance of a default by the
4 electric utility or its successor, obligated to bill and
5 collect the power purchase charges and ~~to reserve fees and~~
6 manage the ~~revenue attributable to the agreement~~ associated
7 revenues as an agent for the department to effectuate the
8 purposes of this part.

9 (h) ~~Except in~~ Prior to default or an entry of an order of
10 relief against ~~with respect to~~ the ~~case of any bankruptcy filing~~
11 ~~by an~~ electric utility under Title 11 of the United States Code,
12 if any payment obligation of the electric utility under a
13 covered power purchase agreement for power purchase costs
14 becomes owed and due, any ~~ownership of or~~ title held by the
15 department in trust to the ~~revenue~~ revenues from power purchase
16 charges for the payment obligation owed and due shall divest
17 from the department and vest in the electric utility or its
18 successor at the time the payment by the electric utility or its
19 successor is made to the obligee. ~~Any vesting of revenues to~~
20 the electric utility ~~when~~ at the time of payment ~~obligations are~~
21 ~~owed and due~~ may be made without appropriation ~~or allotment~~ by
22 the legislature. ~~or allotment.~~ The department ~~may~~ shall not
23 otherwise assign, sell, or transfer any ~~ownership of, or~~ title

1 to, or any claim or right to, the ~~revenue~~revenues from power
2 purchase charges.—

3 ———(or reserve fees.

4 (i)—To meet the requirements of the State and the public
5 utilities commission as ~~it pertains~~they pertain to electric
6 reliability, energy security, and energy diversification under
7 this chapter and any rules adopted pursuant thereto, ~~an~~the
8 electric utility shall ensure that it maintains sufficient
9 availability of electric energy and related products, to the
10 extent provided by an obligee in accordance with a covered
11 power purchase agreement.—The ~~department~~public utilities
12 commission shall exercise its regulatory powers to ensure that
13 ~~an~~the electric utility complies with its obligations under the
14 covered power purchase ~~agreements~~agreement.

15 (j) Notwithstanding any other law to the contrary, ~~an~~the
16 electric utility shall file with the public utilities
17 commission, and the public utilities commission shall allow to
18 become effective, monthly rate adjustments provided under the
19 energy cost recovery clause and purchased power adjustment
20 clause to establish or adjust power purchase charges in a
21 manner designed to:

22 (1) Generate sufficient ~~revenue~~revenues to timely and
23 fully pay amounts when owed and due under covered power
24 purchase agreements; ~~and~~

(2) Ensure that in no event shall revenues fall below the amounts owed and due under covered power purchase agreements by a sum that exceeds the amounts in the reserve account established under section 269-E-~~;~~ and
(3) Recover any applicable taxes and government fees and any incremental administrative costs of the electric utility or the department incurred to implement the requirements of this part.

To achieve the objectives established pursuant to this subsection, unless the public utilities commission otherwise directs, the electric utility may retain ~~revenue~~revenues collected from power purchase charges in excess of amounts owed and due under the covered power purchase ~~agreement.~~ agreements. The obligations of the electric utility and of the public utilities commission under this section shall survive any default by the electric utility and shall terminate only upon the termination of the step-in agreement as provided in subsection (d).

(k) If the electric utility fails to timely file any submission as described in subsection (j), the department shall promptly file, or direct the electric utility to promptly file pursuant to section 269-F(a), and the public utilities commission shall allow to become effective, a substitute submission as if the submission had been filed by the electric

1 utility under subsection (j). The electric utility shall
2 implement the power purchase charges in the substitute
3 submission from the department.

4 **§ 269-C Default of electric utility; successor**
5 **requirements**

6 (a) ~~If~~ Within two business days after the obligee provides
7 notice to the department of a default of a covered power
8 purchase agreement, the department shall provide the electric
9 utility notice of the default. Two days after the electric
10 utility receives the notice, the electric utility shall turn
11 over all revenues from the power purchase charges and reserve
12 fees arising from any covered power purchase agreements
13 identified in the notice, regardless of when collected, then in
14 its possession, and, subject to section 269-B(e), all future
15 revenues from the power purchase charges and reserve fees
16 thereafter collected, ~~to the fund as directed by the~~
17 ~~department; provided that the~~ established pursuant to section
18 269-D(a). These amounts shall include all revenues received by
19 the electric utility after a default for such power purchase
20 charges and reserve fees billed before the default ~~that were~~
21 ~~intended to be used to pay power purchase costs arising from~~
22 ~~the covered power purchase agreement.~~ . The department shall
23 use the ~~revenue~~ revenues collected from the power purchase

1 charges and reserve fees, including the revenues turned over,
2 only in the order as follows:

3 (1) To pay power purchase costs pursuant to ~~a~~ step-in
4 ~~agreement~~ agreements, subject to the appointment,
5 authorization, and empowerment of the electric utility as
6 an agent as described in section 269-F(e); and 7

7 ~~—— (2) To implement a rate credit to customers~~ for
8 ~~revenue~~ revenues in excess of amounts owed under ~~the~~ covered
9 power purchase ~~agreement~~ agreements,

10 (2) To recover any incremental administrative costs of the
11 electric utility or the department incurred to implement
12 the requirements of this part; and

13 (3) To implement a rate credit to customers.

14 (b) Any step-in agreement shall remain in ~~full force and~~
15 effect notwithstanding any bankruptcy, reorganization, or other
16 insolvency proceedings with respect to the electric utility.

17 (c) The obligation of ~~an~~ the electric utility to collect
18 and remit the revenues from power purchase charges and reserve
19 fees pursuant to the requirements of this part shall not be
20 subject to any setoff, counterclaim, surcharge, or defense by
21 the electric utility, or in connection with a bankruptcy of any
22 electric utility.

23 (d) Any successor to an electric utility shall be bound by
24 the requirements of this part. The successor shall perform and

1 satisfy all obligations of the electric utility in the same
2 manner and to the same extent as the electric utility,
3 including the obligation upon default to bill and collect the
4 power purchase charges and reserve fees and remit to the fund
5 the revenues collected ~~revenue to the department~~ in connection
6 with any covered power purchase agreement, unless and until the
7 step-in agreement is terminated as described in section ~~269--~~
8 B(d).

9 (e) If the ~~credit rating of the electric utility or its~~
10 ~~successor achieves investment grade status,~~ step-in agreement is
11 terminated as described in section 269-B(d), then by operation
12 of law, any ~~ownership of and~~ title to the ~~revenue~~ revenues from
13 power purchase charges and reserve fees attributable to the
14 covered power purchase agreement shall immediately ~~divest from~~
15 ~~the department and vest in the electric utility or its~~
16 ~~successor; provided that~~ cease to be held in trust and the
17 electric utility or its successor shall thereafter be the sole
18 ~~owner and~~ holder of title or beneficial and equitable interest
19 in, and any claim or right to, the revenue, and the obligation
20 of the electric utility or its successor to bill and collect
21 the power purchase charges and reserve fees and manage the
22 ~~revenue~~ revenues as an agent for the department, and, if
23 applicable, to remit the collected ~~revenue~~ revenues to the fund,
24 shall terminate.

§ 269-D Power purchase costs trust fund

(a) There is established ~~in~~outside the state treasury the power purchase costs trust fund ~~into which~~to be administered by the department. The electric utility shall ~~be deposited~~ deposit into the fund all ~~proceeds of the power~~revenues collected in connection with covered power purchase agreements from

(1) Power purchase charges ~~to be paid~~ in the event of a default of ~~a covered power purchase agreement by the electric utility~~agreements and

(2) Reserve fees.

(b) Moneys in the fund shall be ~~administered and~~ held by the department in trust for the benefit of obligees of covered power purchase agreements to the extent ~~the obligees are owed~~of the amounts owed to such obligees. The department's payments from the fund shall be made without appropriation or allotment as provided in section 37-40.

(c) If the ~~credit rating of the electric utility or its successor achieves investment grade status~~, step-in agreement is terminated as described in section 269-B(d), the fund shall cease to receive any ~~revenue~~revenues from the power purchase charges collected by ~~that the~~ electric utility or its successor and the department shall pay to the electric utility or its successor the remainder of any moneys in the fund; ~~provided~~

1 ~~that the~~ attributable to power purchase charges. Those moneys
2 ~~in the fund~~ shall be considered ~~revenue~~ revenues of the electric
3 utility or its successor.

4 (d) The department shall be under no obligation to make
5 payment to any obligee ~~if in excess of~~ the moneys in the fund ~~are~~
6 ~~depleted.~~ . Any default or failure by the department to make
7 payments pursuant to the terms of a step-in agreement under this
8 part shall not result in any recourse by the electric utility or
9 obligee to any funds of the State other than the revenues
10 derived from power purchase charges and the ~~subsidy~~ surcharge for
11 the reserve account collected and on deposit in the fund.

12 § 269-E ~~Power purchase costs reserve fee~~ Reserve account;
13 **establishment.**

14 (a) By August 1, 2025, the public utilities commission shall
15 authorize ~~a surcharge~~ surcharges proposed by an electric
16 utility, referred to as ~~the power purchase costs reserve fee,~~
17 ~~the revenue from which shall be accorded the same treatment as~~
18 ~~revenue from power purchase charges as described in section~~
19 ~~269-B(g).~~ ~~The power purchase costs reserve fee~~ reserve fees.
20 Reserve fees may be included in the purchased power adjustment
21 clause on customer bills. The department shall establish and
22 maintain a separate account to accept and account for revenues
23 from reserve fees as part of the fund established under section
24 269-D, and the electric utility shall promptly deposit all

1 revenues collected from reserve fees into the account. The
2 electric utility shall not otherwise assign, sell, or transfer
3 any title to, or any claim or right to, the revenues from
4 reserve fees, except as provided under this part. The electric
5 utility shall not access the reserve account or utilize the
6 revenues deposited therein, except as directed by the
7 department pursuant to section 269-F(e).

8 (b) ~~The power purchase costs reserve fee~~ Reserve fees shall
9 be collected and maintained to establish a reserve account in
10 an amount not to exceed the total of fifteen per cent of the
11 forecasted monthly power purchase costs of all covered power
12 purchase agreements. ~~plus an amount sufficient to recover costs~~
13 related to administration of the reserve account and any
14 applicable taxes and fees.

15 (c) ~~In the event of default pursuant to section 269-C(a),~~
16 ~~all previously collected revenues and all future revenues from~~
17 ~~the power purchase costs reserve fee shall be accorded the same~~
18 ~~treatment as revenues from power purchase charges as described~~
19 ~~in section 269-C.~~

20 ~~Notwithstanding subsection (c), if the credit~~
21 ~~rating of the electric utility or its successor achieves~~
22 ~~investment grade status and~~ If the step-in agreement terminates
23 pursuant to section ~~269-B(d),~~ all reserve fees collected in
24 connection with the covered power purchase agreement shall

1 cease to be collected, and all moneys remaining in the fund
2 attributable to the reserve ~~collected from the power purchase~~
3 ~~costs reserve fee~~fees shall be returned in full, together with
4 any associated interest earned, to customers through a rate
5 credit.

6 ~~(e)~~ (d) In the special circumstances of this part,
7 the legislature finds and declares that the reasonable reserve
8 requirement of article VII, section 13, clause 8 of the Hawaii
9 State Constitution, to the extent applicable, has been
10 satisfied.

11 **§ 269-F Electric utility; agent of the department**

12 (a) To implement the requirements of this part, the
13 department ~~may~~ shall contract with an electric utility or its
14 successor to act as an agent of the department to provide
15 billing, collection, payment, management, and other related
16 services ~~on terms and conditions that reasonably compensate the~~
17 ~~electric utility or its successor for its incremental cost to~~
18 ~~provide services, and adequately secure payment to the~~
19 ~~department.~~ .

20 (b) At the request of the department, the public utilities
21 commission shall order an electric utility or its successor to
22 perform the duties pursuant to a contract under subsection (a).

23 (c) The act of serving as an agent to bill and to collect
24 the power purchase charges and reserve fees shall not cause any

1 electric utility to be subject to the laws that regulate
2 financial institutions, escrow depositories, or collection
3 agencies.— An electric utility shall not be responsible for
4 lending, underwriting, and credit determinations in respect to
5 these billing and collection activities.

6 (d) To the extent any ~~moneys~~revenues are received by an
7 electric utility pursuant to subsection (a) ~~or section 269-~~
8 ~~B(g),~~ in the process of collection, and pending their transfer
9 to the ~~department,~~fund pursuant to section 269-D(a), those
10 moneys necessary to timely and fully pay amounts when owed and
11 due under covered power purchase agreements shall be held in
12 trust for the department's exercise of its obligations pursuant
13 to this part.

14 (e) To implement the requirements of this part, the
15 director of finance may appoint, authorize, and empower the
16 electric utility, as agent for and on behalf of the
17 ~~State~~department, to manage and pay out moneys, including from
18 the fund, for fulfillment of payment obligations of the
19 ~~State~~department arising from covered power purchase
20 agreements.— The appointment shall terminate when the step-in
21 agreement ~~for the covered power purchase agreements terminates~~
22 ~~pursuant to~~is terminated as described in section 269-B(d)."

23 SECTION 3. If any provision of this Act, or the
24 application thereof to any person or circumstance, is held

1 invalid, the invalidity does not affect other provisions or
2 applications of the Act that can be given effect without the
3 invalid provision or application, and to this end the
4 provisions of this Act are severable.

5 SECTION 4. In codifying the new sections added by section
6 2 of this Act, the revisor of statutes shall substitute
7 appropriate section numbers for the letters used in designating
8 the new sections in this Act.

9 SECTION 5. This Act shall take effect ~~on May 13, 2040~~upon
10 its approval.

11
12 INTRODUCED BY: _____

13 BY REQUEST

.B. NO.

Report Title:

BNF; Public Utilities Commission; Energy; Step-In Agreements; Power Purchase Agreements; Power ~~Purchasing~~Purchase Costs Trust Fund

Description:

~~Allows the State~~Requires the Department of Budget and Finance to enter into step-in agreements for payment obligations arising under certain power purchase agreements. ~~-Establishes the Power~~PurchasingPurchase Costs Trust Fund. ~~-Establishes that revenues from on-bill charges for power purchase agreements and~~accompanying reservesrevenues from a surcharge supporting a reserve account shall be held in trust by the State, and that independent power producers shall hold a beneficial interest in the ~~revenue and reserve~~revenues to the extent of the amounts owed under the covered power purchase agreements. ~~-Appoints, authorizes, and empowers an~~the electric utility to serve as the billing, collection, payment, and managing agent of the Department of Budget and Finance in the service of performing step-in agreements. ~~-Effective 5/13/2040.-(SD1)~~

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



Feb 26th, 2025

TESTIMONY TO THE COMMITTEE ON WAYS AND MEANS

10:30 AM, FEBRUARY 27, 2025

Conference Room 211 & Via Videoconference

SB 1501 SD1

Chair Dela Cruz, Vice Chair Moriwaki, Members of the Committee,

Nexamp **supports** SB 1501 SD1 and offers **comments**, which would confirm that the State Office of Budget and Finance may enter into step-in agreements that provide surety for payment obligations to developers arising under power purchase agreements with HECO.

Nexamp is the provider of Community Based Renewable Energy (CBRE) projects benefitting Hawaii's Low-To-Moderate-Income (LMI) ratepayers. Nexamp has been selected to deliver four projects on Hawaii Island and Oahu, serving over three thousand LMI households. Because the Nexamp Hawaii projects are designated to benefit the economically disadvantaged, these projects are extremely important and in the public interest. However, these and future CBRE projects are at risk due to the utility's financial status. The ability to finance these projects requires the same financial treatment as utility scale Stage 3 projects and Integrated Grid Planning (IGP) projects as described in SB 1501.

We ask the Committee to consider amendments to SB 1501 that confirm the application of this critical framework to CBRE, Stage 3 projects, and future IGP request for proposals. It is critical that the proposed legislation apply to any renewable projects that meet the definition of "covered power purchase agreement" as provide in legislation to maximize the provision of affordable rates to the residents and businesses of Hawaii.

Thank you for the opportunity to testify,

A handwritten signature in black ink, appearing to read "B. Albert".

Brad Albert

Nexamp Director of Business Development

Senate Bill 1501 SD 1 – Relating to Renewable Energy

TESTIMONY

Hawai'i State Senate
Senate Committee on Ways and Means
Thursday, February 27, 2025
10:30 a.m.

LATE

Aloha Chair Dela Cruz, Vice Chair Moriwaki and Members of the Senate Committee on Ways and Means,

Mahalo for the opportunity to provide testimony in **support of SB 1501 SD 1, relating to renewable energy**. AES Hawai'i is the state's largest renewable energy provider. We share the state's vision for a 100% renewable energy future to enhance energy resilience, decarbonization, and promote energy equity. We are working to accelerate and support Hawai'i's transition toward a carbon-free energy future with renewable projects across the Hawaiian Islands totaling over 405 MW of solar, solar plus storage, and wind resources in operation or under contract, with 102.5 MW of Stage 1 projects, 37 MW of Stage 2 projects. Additionally, AES Hawai'i has two Stage 3 projects which recently signed PPAs and were submitted to the PUC for review and approval.

The purpose of SB 1501 SD1 is to mitigate the impact of HECO's current non-investment grade status on the financing for renewable energy projects developed by Independent Power Producers ("IPPs"). The bill is essential for ensuring that IPPs, like AES Hawai'i, can secure competitive financing terms for renewable energy projects under HECO's Stage 3 RFP and IGP RFP.

IPPs rely on lenders and investors to finance utility-scale renewable energy projects under Power Purchase Agreements (PPAs) with HECO. Achieving the lowest PPA rates for these projects requires a PPA customer (HECO) with an investment grade credit rating. Given HECO's current non-investment grade status, it is imperative to AES Hawai'i and all IPPs that have PPAs with HECO for utility-scale renewable energy projects that these PPAs are supported by the proposed step-in agreements. Furthermore, it is critical the department enter into the proposed step-in agreement to avoid delays to IPPs in developing, constructing, and financing their projects. This ensures IPPs can procure the best possible financing terms for renewable projects under HECO's Stage 3 RFP and IGP RFP.

The proposed step-in agreement with the State will mitigate the default risk associated with HECO's non-investment grade status and provides important assurances to financiers, enabling the financing of utility-scale renewable energy projects. Without these assurances, financing could become unavailable, limited, or extremely expensive, leading to project cancellations, major price increases and significant delays in the state's transition to 100% renewable energy. It is important to note this bill will not burden ratepayers and is solely designed to ensure renewable energy projects with HECO in Hawai'i remain viable through financing.

AES Hawai'i understands that HECO submitted an amended version of SB 1501 SD 1 as testimony for today's hearing. While we generally support HECO's proposed amendments, there are additional changes that we believe are critical. AES Hawai'i submits the following amendments for consideration, which we believe will enhance financing opportunities and mitigate increased financing costs for renewable energy projects:

-
1. **269-B(e) Step-In Agreements:** We propose to replace “within its sole discretion” with the proposed language below. The requirement that obligees must agree to a resumption of payments by the electric utility after a default under a covered PPA should be included here as provided in HECO’s proposed amendments. The amendment ensures HECO cannot obtain possession of power purchase charges and reserve fees after a default without agreement of the obligees (IPPs). Therefore, we propose the following amendment:

Following a default of a covered power purchase agreement and any payment by the department, the electric utility, through agreement with all obligees of its covered power purchase agreements, may elect to resume payments for power purchase costs owed by the electric utility . . .

2. **Section 269-B(f):** We propose a technical amendment by inserting the words “in the event of” prior to the words “a default”. The use of the word “due” in the phrase “due to a default” was not intended as the word “due” was intended to be used in the phrase “as and when due” referring to the prompt payment of power purchase costs owed by an electric utility to an obligee . Therefore, we propose the following amendment:

The department may impose other conditions, and may include other terms, in a step-in agreement that the department deems necessary to implement the requirements of this part, provided that such conditions and terms shall not adversely affect the obligation of the department to make prompt and full payments for power purchase costs owed by an electric utility to the obligee as and when due in the event of a default as required by Section 269-B(a) or otherwise be inconsistent with the covered power purchase agreement.

3. **Section 269-B(h) Step-in agreements:** We propose a technical amendment to the first sentence of 269-B(h) by inserting the words “prior to default” at the beginning of the first sentence and replacing the words “except in the case of any bankruptcy filing by an electric utility” with the words “or an entry of an order of relief with respect to the electric utility under Title 11 of the United States Code.” The proposed language below is necessary to ensure that after a default or a bankruptcy filing by the electric utility or by creditors of the electric utility, title to the revenues does not divest from the department and vest in the electric utility.

Except in the case of any bankruptcy filing by an electric utility Prior to default or an entry of an order of relief with respect to the electric utility under Title 11 of the United States Code, if any payment obligation of the electric utility under a covered power purchase agreement for power purchase costs becomes owed and due, any title held by the department in trust to the revenues from power purchase charges for the payment obligation owed and due shall divest from the department and vest in the electric utility or its successor at the time the payment by the electric utility or its successor is made to the obligee.

Thank you again for your time and consideration. AES Hawai‘i supports this measure, to ensure the financial viability of our renewable energy projects and to ensure Hawai‘i can achieve ambitious renewable energy goals embedded in our state energy policy.

Mahalo for your consideration.

A handwritten signature in black ink, appearing to read 'Sandra Larsen', with a long horizontal flourish extending to the right.

Sandra Larsen
President
AES Hawai'i