



**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. 2, RELATING TO ENERGY.

BEFORE THE:

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

DATE: Tuesday, March 11, 2025

TIME: 9:00 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Randall S. Nishiyama, Deputy Attorney General

Chair Lowen 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 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 allow 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 13-20.

2. ***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 13, through page 20, line 9) 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.
3. ***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.
4. ***Potential State Liability.*** We strongly recommend that the Legislature 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 7, 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 16, through page 10, line 19. In all circumstances, any default or failure to make payments by B&F pursuant to the terms of a step-in agreement should 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.

If B&F fails to perform any required action or duty under this agreement in a timely manner, we propose that the sole remedy for any party will be specific performance. Additionally, we propose that B&F will not be held liable for monetary or compensatory damages resulting from a breach of the step-in agreement.

5. Additional Comments.

- a. This bill does not include references to the power purchase agreements that are procured through the Stage 3 and Integrated Grid Planning request for proposals, which are included in House Bill No. 974, H.D. 1 (House Bill).
- b. This bill does not consistently limit B&F's obligations to make payments pursuant to the terms of a step-in agreement to the power purchase charges and reserve fees that are on deposit in the fund and does not consistently state that 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.
- c. This bill is not consistent as to where the trust fund is established and makes references to both inside and outside the State treasury.
- d. The concept of the reserve fees and revenues is introduced in this bill but is not consistently applied throughout the bill.

- e. The definitions of "Obligee", "Power purchase charges", and "Power purchase costs" differ between this bill and the House Bill. This bill includes additional language that is not included in the House Bill.
- f. Section 269-B(a) includes a provision that a step-in agreement obligates B&F to pay the claims of the independent power producer from moneys in the fund arising out of the termination of the covered power purchase agreement by an electric utility under bankruptcy law. This provision has been deleted in the House Bill.
- g. This bill does not provide that upon termination of the step-in agreement, B&F will have no obligation to the electric utility or an independent power producer upon the default by the electric utility.
- h. In setting forth what monthly rate adjustments can be used for in section 269-B(j), this bill does not include the following language: "Recover any applicable taxes and government fees and any incremental administrative costs of the department incurred to implement the requirements of this part."
- i. In setting forth what B&F is able to use the revenues from the power purchase charges and the reserve fees on deposit in in the fund for, section 269-C(a) of this bill does not include the following language: "To recover any governmental administrative costs of the utility or the department incurred to implement the requirements of this part."
- j. In calculating the reserve fee, section 269-E(B) does not include amounts sufficient to recover costs related to the administration of the reserve account and any applicable taxes and fees in the amount of the reserve fee.

Attached is our proposed markup of the bill showing the revisions we believe would resolve these problems. We would be happy to assist the Committee in preparing a House Draft 1.

We respectfully ask the Committee to consider our comments.

A BILL FOR AN ACT

RELATING TO ENERGY.

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

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

The procurement or purchase of energy from replacement clean energy resources by a certain investor-owned electric utility and its electric utility subsidiaries is ongoing in its stage 3 request for proposals, further anticipated in its first

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integrated grid planning request for proposals and other proposals. These requests for proposals implement energy plans that are developed through extensive engagement with local stakeholders and communities and reviewed and approved by the public utilities commission. The legislature finds that successful purchase of energy from clean energy resources is in the public interest and necessary to avoid significant detrimental reliability and affordability impacts to electric utility customers.

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

The legislature further finds that continued development of clean energy resources requires adequate assurances to independent power producers that ~~[prompt and full]~~ payments for purchased power will be made as and when due by the utility under power purchase agreements~~[,]~~ ~~[irrespective of the financial strength of an electric utility]~~. The current sub-investment-grade status of a certain investor-owned electric utility and its subsidiaries, arising from the tragic events

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that occurred in the 2023 Maui wildfires, has led independent power producers, and those who would finance renewable energy projects, to raise concerns about the reliability of payment by the utility and its subsidiaries under ~~[new]~~-power purchase agreements procured through the Stage 3 and Integrated Grid Planning requests for proposals. Those concerns may cause independent power producers to cancel renewable energy projects or increase the prices they would charge for deliveries to address this perceived credit risk. Either outcome would be contrary to the interests of electric utility customers in the State.

The legislature further finds that the public interest could be served ~~[by]~~-if the department of budget and finance ~~[State]~~-enters into ~~[providing limited credit support through]~~ step-in agreements with independent power producers, pursuant to ~~[under]~~-which the department of budget and finance ~~[State will]~~ would agree to make payments to independent power producers after a failure by an ~~[in the event of a default in payment by an]~~-electric utility to make required payments pursuant to the terms of the power purchase agreements pursuant to the terms of a step-in agreement. The department of budget and finance's obligation to make payments pursuant to the terms of a step-in agreement is limited to the revenues associated with a power purchase agreement subject to a step-in agreement and reserve

fees that are on deposit in the power purchase costs trust fund established by the department of budget and finance. Neither the full faith and credit of the [State] state, nor any other moneys of the State, will be pledged for any obligations under a step-in agreement. These step-in agreements[agreements]-can provide assurances to independent power producers that [prompt and full]-payments for purchased power will be made. 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]department of budget and finance.

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~~[The legislature also finds that the 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 under a power purchase agreement subject to a step-in agreement, these revenues transferred to and on deposit in the power purchase costs trust fund established by the department of budget and finance would cover [all]-any payment obligations of the

department of budget and finance to the independent power producers~~[State]~~—for electric energy and related products. In the absence of default, the electric utility will be authorized to utilize ~~[these]~~—revenues from power purchase charges to discharge its obligations to pay independent power producers for electric energy and related products. The obligations of the department of budget and finance~~[State]~~—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.

Therefore, the purpose of this Act is to:

- (1) Allow the department of budget and finance ~~State~~ to enter into a step-in agreements with an independent power producer under which the department of budget and finance will agree to make required payments from revenues from power purchase charges and reserve fees to the independent power producer after a failure by the electric utility to make required payments pursuant to the terms of a power purchase agreement~~[for payment obligations arising under new power purchase agreements entered into between an investor-owned electric utility and its regulated subsidiaries and independent power producers]~~;

- (2) Allow the department of budget and finance to
[Establish]-establish a trust fund outside [within]
the [State] state treasury that shall be capitalized
by revenues from a surcharge supporting a reserve
account and, in the event of a default, by revenues
from power purchase charges, in each case associated
with covered power purchase agreements, for the
fulfillment of payment obligations arising from the
power purchase agreement~~[immediately in the event of a~~
~~default to fulfill state-backed payment obligations~~
~~arising from power purchase agreements subject to~~
~~step-in agreements]~~;
- (3) Establish that revenues from on-bill charges for
covered power purchase agreements and revenues from a
surcharge supporting a reserve account that are
deposited in the trust fund established by the
department of budget and finance ~~and accompanying~~
~~reserves~~ shall be held in trust by the State, and that
independent power producers shall hold a beneficial
interest in [the]-such revenues and reserves to the
extent they are owed under the covered power purchase
agreements; and
- (4) Appoint, authorize, and empower an electric utility to
serve as the billing, collection, payment, and

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management agent of the department of budget and finance to implement the requirements of this Act [~~in the service of performing step-in agreements~~].

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:

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

"Default" means the failure by an electric utility to pay power purchase costs when due to an obligee under a covered power purchase agreement after the expiration of any applicable grace or cure periods and extensions thereto. "Default" shall not mean a bankruptcy filing by an electric utility.

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

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

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

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

"Investment grade status" means a credit rating for the electric utility's senior unsecured long-term debt obligations or an ~~[issuer's]~~ ~~[issued]~~ issuer credit rating for the electric utility (in each case, not supported by third party credit enhancements) from at least two out of the three of the following:

- (1) At least BBB- or higher from S&P Global Ratings, or any successor by law;
- (2) At least BAA3 or higher from Moody's Investor Services, Inc., or any successor by law; or
- (3) At least BBB- or higher from Fitch Ratings, Inc., or any successor by law.

"Obligee" means any user, owner, or operator of the Hawaii electric system that ~~[does not claim a tax credit for a project system under section 235-12.5 and 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

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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 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 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 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 electric utility]~~. "Power purchase costs" also include all categories of costs recoverable under the energy cost recovery clause and the purchased power adjustment clause under its 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

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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 department ~~[State]~~ undertakes an obligation of ~~[prompt and full]~~ payment for power purchase costs owed to an obligee by an electric utility under a power purchase agreement following a default; 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 on deposit in the fund established pursuant to section 269-D collected in connection with the covered power purchase agreements.

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

§269-B Step-in agreements. (a) The department ~~[shall]~~ ~~[may]~~ shall enter into a step-in agreement with an obligee that requires the department to make ~~[prompt and full]~~ payments for

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power purchase costs owed by an electric utility to the obligee in the event of a default~~[-.];~~ provided that before entry into

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any agreement, the department may conduct due diligence on a prospective obligee. ~~[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.]~~ Pursuant to such step-in agreement and ~~[u]pon~~upon the

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default, the department shall make payments to the obligee for power purchase costs with moneys on deposit ~~[from]~~in the fund as and when due by the electric utility under the covered power purchase agreement; provided that any such step-in agreement shall provide that the department's payment obligation thereunder shall be limited to the revenues from power purchase charges and reserve fees collected in connection with the covered power purchase agreements that are on deposit in the fund established by the department pursuant to section 269-

D. ~~[The]~~Each step-in agreement shall include a clause stating that ~~[sh]~~neither the ~~[all not be an obligation for which the]~~ full faith and credit of the ~~[State]~~ state nor any other moneys of the [State] state will be ~~[is]~~pledged for any obligations pursuant to the terms of a step-in agreement and that notwithstanding any other law or provision to the contrary, in

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the event of a failure of the department to comply with any provision of a step-in agreement, the sole and exclusive remedy of the electric utility and/or the obligee under such step-in agreement shall be an action to compel performance, including seeking specific performance by court order, and under no circumstances shall the department be liable for any costs, expenses or other monetary relief and/or compensatory damages.

[, and an]—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 agreements that are transferred and deposited by the electric utility in the fund established by the department pursuant to section 269-D.

(b) The department [shall]—may enter into a step-in agreement for [each]—a covered power purchase agreement only if the power purchase agreement subject to the step-in agreement arises from the Stage 3 request for proposals under docket number 2017-0352 before the public utilities commission or the first Integrated Grid Planning request for proposals issued under docket number 2024-0258 before the public utilities commission. The department [shall]—may enter into a step-in agreement [when]—related to a the power purchase agreement [subject to the step-in agreement] when the —power purchase

agreement is executed, or if the power purchase agreement has already been executed as of July 1, 2025, as soon as reasonably possible.

(c) The [Payment]e-payment obligations by the department under a step-in agreement shall commence not later than two days after the date of a notice from the department to the electric utility pursuant to section 269-C(a).

(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]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.

(e) Following a default of a covered power purchase agreement and any payment by the department from monies~~monies~~ in the fund, 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, regardless of the credit rating of the electric utility at that time, in which case the electric utility shall cease to transfer revenues from power purchase charges collected in connection with the covered power purchase agreement to the fund as described in section 269-C(a), and may use the revenue from

power purchase charges as specified 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 solely from ~~[monies]~~moneys on deposit in the fund established pursuant to section 269-D; provided however, that no such election is permitted of the department has made payment with moneys from the reserve fees.

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(f) 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 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 obligee as and when due to a default as required under subsection (a) or otherwise]~~ be inconsistent with the covered power purchase agreement.

(g) As consideration for the department [State] 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 from power purchase charges and reserve fees attributable to the covered power purchase agreement to the department to be held in trust, ~~[and,~~

~~under the agreement, the department shall be deemed to be the sole holder 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 the obliges are owed. The revenues shall not be subject to appropriation for any other purpose. The revenues, ~~[if held in a depository other than the state treasury,]~~ shall be exempt from the requirements of chapters 36 and 38. The electric utility or its successor shall be obligated to bill and collect the power purchase charges and ~~the reserve fees and [to]~~ manage the revenues ~~[attributable to the agreement]~~ as an agent for the department ~~[to effectuate the purposes of this part]~~.

(h) ~~Prior to default [Except in the case of any bankruptcy filing by an electric utility]~~, 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 to the revenue 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 is made to the obligee. Any vesting of revenues from power purchase charges to the electric utility when payment obligations are owed and due may be made without appropriation or allotment by the legislature. The department may not otherwise assign, sell, or transfer any

ownership of, or title to, any claim or right to the revenue from power purchase charges or reserve fees.

(i) To meet the requirements of the State and the public utilities commission as it pertains to electric reliability, energy security, and energy diversification under this chapter and any rules adopted pursuant thereto, an 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 public utilities commission [~~department shall~~] may exercise its regulatory powers to ensure that an electric utility complies with its obligations under the covered power purchase agreements.

(j) Notwithstanding any other law to the contrary, an electric utility shall file with the public utilities commission, and the public utilities commission [~~shall~~]-may 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 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 established under section 269-E.

(3) Recover any applicable taxes and government fees and any incremental administrative costs of 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 revenues s from power purchase charges collected in excess of amounts owed and due under the covered power purchase agreement. 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, 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.]~~

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§269-C Default of electric utility; successor

requirements. (a) If the obligee provides notice to the department of a default of a covered power purchase agreement, the department shall provide the electric utility with a copy of such notice of ~~[the]~~-default. ~~[Two]~~-One ~~[days]~~day after the electric utility receives the notice, the electric utility shall ~~[turn over]~~transfer all revenues from 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 all future revenues from the power purchase charges and reserve fees thereafter collected, to the fund established pursuant to section 269-D(a) ~~[as directed by the department]~~; provided that the amounts shall include revenues received by the electric utility after a default for 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 from the power purchase charges and reserve fees ~~[7]~~-on deposit in fund established by the department pursuant to section 269-D ~~[including the revenues turned over]~~, only in the order as follows:

- (1) ~~(1)~~ To pay power purchase costs pursuant to a step-in agreement, subject to the appointment,

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authorization, and empowerment of the electric utility as an agent as described in section 269-F(e) and for revenues in excess of amounts owed under covered power purchase agreements; [and]

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

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- ~~[(23)]~~ (3) To implement a rate credit to customers ~~for~~

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~~revenue in excess of amounts owed under the covered power purchase agreement]~~.

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

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

(d) Any successor to an electric utility shall be bound by the requirements of this part. The successor shall perform and satisfy all obligations of the electric utility in the same manner and to the same extent as the electric utility, including the obligation to bill and collect the power purchase charges

and reserve fees and remit the collected revenue to the department in connection with any covered power purchase agreement, unless and until the step-in agreement is terminated as described in section 269-B(d).

(e) If the credit rating of the electric utility or its successor achieves investment grade status, then by operation of law, any ownership of and title to the revenue from power purchase charges attributable to the covered power purchase agreement shall immediately cease to be held in trust ~~[divest from the department and vest in]~~ and the electric utility or its successor ~~[, provided that 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 revenues from power purchase charges, and the obligation of the electric utility or its successor to bill and collect the power purchase charges and the reserve fees and manage the revenue as an agent for the department, and, if applicable, to remit the collected revenues to the fund, shall terminate.

§269-D Power purchase costs trust fund. (a) There is established outside the state treasury the power purchase costs trust fund, to be administered by the department ~~[,].~~ ~~[into]~~ The electric utility [which] shall ~~[be deposited]~~ deposit into the fund all revenues collected in connection with covered power purchase agreements from:

(1) Power purchase charges in the event of a default of covered power purchase agreements; and

(2) Reserve fees.~~all proceeds of the power purchase charges to be paid in the event of a default of a covered power purchase agreement by the electric utility.~~

(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. 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, the fund shall cease to receive any revenue from the power purchase charges collected by that electric utility and shall pay to the electric utility or its successor the remainder of any moneys in the fund attributable to power purchase charges; provided that the moneys in the fund from to power purchase charges shall be considered revenue of the electric utility.

(d) The department shall be under no obligation to make payment to any obligee if 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 for the reserve account collected and on deposit in the fund.

§269-E ~~[Power purchase costs reserve fee]~~ Reserve account; establishment. (a) By August 1, 2025, the public utilities commission ~~shall~~ may create a utility-wide nonbypassable surcharge ~~[authorize a surcharge proposed by an electric utility]~~, referred to as ~~[the power purchase costs]~~ reserve ~~[fees]~~ fees, which shall be deposited into an account within the fund established under section 269-D and be pledged to secure and be applied to the repayment of payment obligations under a covered power purchase agreement to the extent that there is a shortfall in the amount of power purchase charges on deposit in the fund. ~~-[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]~~ Reserve fees shall be collected by the electric utility or its successors, as collection agents for the department, in full through a surcharge, that is separate and apart from the electric utility's rates. The department shall establish and maintain a separate account within the fund established under section 269-D to deposit and account for revenues from reserve fees and the electric utility shall within one day of receipt deposit all revenues collected from reserve fees directly into

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such 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 public utilities commission may require, in the financing order authorizing and/or approving the surcharge, that, if a default by the electric utility in remittance of the reserve fee collected occurs, the public utilities commission, upon the application by the department, and without limiting any other remedies available to the department by reason of the default, shall order the sequestration and payment to the beneficiaries of the reserve fee. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.

(b) [The power purchase costs r]Reserve fees shall be collected and maintained to establish a reserve 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. ~~{Query: will this be a set dollar amount and an ongoing obligation to replenish if drawn upon?}~~

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

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

§269-F Electric utility; agent of the department. (a) To implement the requirements of this part, the department may 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]~~.

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(b) At the request of the department, the public utilities commission ~~[shall]~~-may order an electric utility or its successor to perform the duties pursuant to a contract under subsection (a).

(c) The act of serving as an agent to bill and to collect the power purchase charges and the reserve fees shall not cause any electric utility to be subject to the laws that regulate financial institutions, escrow depositories, or collection agencies. An electric utility shall not be responsible for lending, underwriting, and credit determinations in respect to these billing and collection activities.

(d) To the extent any moneys are received by an electric utility pursuant to subsection (a) ~~[or section 269-B(g),]~~ in the process of collection, and pending their transfer to the to the fund pursuant to section 269-D(a) ~~[department]~~, those moneys shall be held in trust for the department's exercise of its obligations pursuant to this part.

(e) To implement the requirements of this part, the director of finance may appoint, authorize, and empower the electric utility, as agent for and on behalf of the [State] department, to manage and pay out moneys, including from the fund, for fulfillment of payment obligations of the department [State]-arising from step-in agreements related to covered power purchase agreements. The appointment shall

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terminate when the step-in agreement for the covered power purchase agreements terminates pursuant to section 269-B(d)."

~~§269-G Remedies for department's failure to perform. (a) If the department fails to timely execute any action or duty under this part, the sole remedy available to any party shall be specific performance.~~

~~(b) Under no circumstances shall the department be liable for monetary or compensatory damages for breach of a step-in agreement."~~

—SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 5. This Act shall take effect on May 13, 2040.

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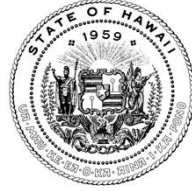
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Report Title:

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

Description:

Allows the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements. Establishes the Power Purchasing Costs Trust Fund. Establishes 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 shall hold a beneficial interest in the revenue and reserve to the extent of the amounts owed under the covered power purchase agreements. Appoints, authorizes, and empowers 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. Effective 5/13/2040. (SD2)



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA
SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Energy & Environmental Protection
Tuesday, March 11, 2025
9:00 a.m.
Conference Room 325**

**On the following measure:
S.B. 1501, S.D. 2, RELATING TO ENERGY**

Chair Lowen 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 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 independent power producers (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.

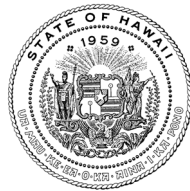
As the legislation is currently drafted, it does not include a mechanism to evaluate whether it resulted in the IPPs providing better power purchase agreement (PPA) pricing to customers and greater deployment of renewable energy. The legislation would also increase rates for Hawaiian Electric’s customers 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

TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
ON
SENATE BILL NO. 1501, S.D. 2

March 11, 2025
9:00 a.m.
Room 325 and Videoconference

RELATING TO ENERGY

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

Senate Bill (S.B.) No. 1501, S.D. 2, 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 who have not claimed a renewable energy technologies income tax credit under Section 235-12.5, HRS, in the event of a default; 2) establish the Power Purchase Costs Trust Fund (PPCTF) outside of the State Treasury for B&F to collect revenues and make payments under a step-in agreement; 3) requires the electric utility to file monthly rate adjustments for the power purchase charges with the Public Utilities Commission (PUC); 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.

B&F remains concerned that S.B. No. 1501, S.D. 2, 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. S.D. 2 also does not limit step-in agreements to power purchase agreements between electric utilities and an independent power producer in effect before the effective date of this measure, which means there is no limit to the number of step-in agreements into which B&F would be required to execute.

B&F further notes that unlike the House counterpart bill, House Bill No. 974, H.D. 1, S.B. No. 1501, S.D. 2, does not explicitly provide for the recovery of incremental administrative costs incurred by the department to implement and administer the step-in agreements. Pursuant to Section 269-B(k) (page 15, lines 8 to 15), B&F could be a party before the PUC and required to file monthly rate adjustments should the electric utility fail to do so, B&F would require a mechanism to cover these expenses. It is unclear whether the proposed PPCTF would be self-sustaining given the potential overall financial state of the electric utility should a default occur.

Thank you for your consideration of our comments.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
PUBLIC UTILITIES COMMISSION
465 S. KING STREET, #103
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Testimony of the Public Utilities Commission

To the
House Committee on
Energy and Environmental Protection

March 11, 2025
9:00 a.m.

Chair Lowen, Vice Chair Perruso, and Members of the Committee:

Measure: S.B. No. 1501, S.D. 2
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

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
Tuesday, March 11, 2025 — 9:00 a.m.

Ulupono Initiative supports SB 1501 SD 2, Relating to Energy.

Dear Chair Lowen and Members of the Committee:

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

Ulupono supports SB 1501 SD 2, 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.

Investing in a Sustainable Hawai'i

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 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,

Micah Munekata
Director of Government Affairs



TESTIMONY TO THE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

9:00 AM, March 11, 2025

Conference Room 325 & Via Videoconference

SB 1501 SD2

Chair Lowen, Vice Chair Perruso, and Members of the Committee,

TerraForm Power **supports** SB 1501 SD2, allowing the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements.

TerraForm Power is the largest operator of wind energy in Hawai'i and is a leading owner, operator, and producer of renewable energy in North America. TerraForm owns and operates 81 MW of wind energy projects in Hawai'i including the 30 MW Kaheawa Wind Power 1 facility in Maui, which was awarded under the Hawaiian Electric Stage 3 RFP. The energy produced by this facility is critical to providing affordable and reliable energy to Maui residents at a cost substantially less than fossil fuel generation.

The step-in agreement in SB 1501 SD2 importantly and appropriately applies to all prospective covered purchase agreements, not just those under Stage 3 and the IGP RFP; this is critical due to the uncertainty surrounding the timing of the utility's recovery back to investment-grade status. Hawai'i urgently needs more energy capacity for grid stability. As the utility retires aging fossil fuel plants, this broader coverage helps ensure that all renewable energy projects are supported from a consistent and predictable investment environment.

For further consideration, existing projects with power purchase agreements face many of the same risks as future renewable energy projects. If the utility defaults and fails to meet its obligations, current operating renewable projects could be jeopardized, potentially leading to energy shortfalls and outages. Expanding the step-in agreement to include these existing projects would provide critical financial stability and ensure uninterrupted energy supply for Hawai'i.

SB 1501 SD 2 advances Hawai'i's transition to clean energy while ensuring reliable and affordable electricity for residents. This bill is essential for meeting Hawai'i's clean energy goals and protecting both investors and ratepayers.

We ask that the Committee pass SB1502 SD2. Thank you for the opportunity to testify.

**Senate Bill 1501 SD 2 – Relating to Renewable Energy
TESTIMONY**

Hawai'i State House of Representatives
House Committee on Energy and Environmental Protection
Tuesday, March 11, 2025
9:00a.m.

Aloha Chair Lowen, Vice Chair Perruso and Committee Members,

Mahalo for the opportunity to provide testimony in **support of SB 1501 SD 2, 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 and 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 SD2 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 that the department of budget and finance enter into the proposed step-in agreements 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 department of budget and finance 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 for HECO and ratepayers and significant delays in the state's transition to 100% renewable energy. It is important to note this bill is primarily intended to help ratepayers mitigate financial risk of rising electricity costs if renewable energy projects with HECO in Hawai'i cannot remain viable through financing.

AES Hawai'i supports the package of amendments submitted by HECO, which incorporates requested changes from the State and IPPs, including AES. In addition, AES Hawai'i respectfully requests the following amendments, which are intended to ensure the bill can be implemented as intended 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) Step-In Agreements:** We propose a technical amendment by inserting the words “in the event of” prior to the words “a default” so that “as and when due” and “in the event of a default” are separate phrases as intended by our earlier comments on the bill. 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 ~~to~~ in the event of a default as required under subsection (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.

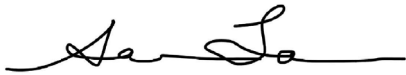
Except in the case of any bankruptcy filing by an electric utility Prior to default or an entry of an order of relief with respect to the electric utility under Title 11 of the United States Code, if any payment obligation of the electric utility under a covered power purchase agreement for power purchase 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.

-
4. **Section 269-F (a) Electric Utility; agent of the department:** The current bill states that the Department may contract with the electric utility to act as an agent on the State's behalf to provide billing, collection, payment, management and other related services. AES believes that HECO is best positioned to perform these services so we agree with HECO that "may" should be replaced with "shall" in the first line. In addition, and consistent with that proposed amendment, to avoid the need for a lengthy procurement process, we propose to add language that would exempt this contract with HECO from Chapter 103D, the State Procurement Code.

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. The department's contract with the electric utility for such services is exempt from chapter 103D.

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.



Sandra Larsen
President
AES Hawai'i



**Hawaiian
Electric**

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

**STRONG SUPPORT OF SB 1501, SD2
Relating to Energy**

Tuesday, March 11, 2025
9:00AM
State Capitol, Conference Room 325

Rebecca Dayhuff Matsushima
Vice President, Resource Procurement
Hawaiian Electric

Dear Chair Lowen, Vice Chair Perruso, and Members of the Committee,

My name is Rebecca Dayhuff Matsushima and I am testifying on behalf of Hawaiian Electric in **strong support** of SB 1501, SD2, 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 showing our proposed changes. We note that many of these changes have already been incorporated into companion bill HB 974 HD1, which is before the Senate, and some additional edits are provided to address more recent comments.

Hawaiian Electric’s proposed amendments also request the deletion of certain edits in SB 1501, SD2, which unnecessarily broadened the scope of the bill to include any prior power purchase agreements (“PPAs”) as well as all future PPAs beyond Stage 3 and the Integrated Resource Planning requests for proposals, and also revised the definition of “obligee” to

exclude any IPPs that claim a tax credit for a project system under HRS section 235-12.5. The scope of the original bill was intentionally narrow to limit the impact to customers and the State. Further, if the original scope of the bill is reinstated, the revised definition of “obligee” is unnecessary because it is highly unlikely that HRS section 235-12.5 would apply, as the credit is inapplicable to projects larger than 5 MW which entered into PPAs after 2019.

SB 1501, SD2 would provide significant benefits 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 Stage 3 Request for Proposals (“RFP”) have indicated that the Hawaiian Electric’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 (“RPS”) and greenhouse gas laws. If developers continue to withdraw their projects, or decide not to bid into Hawaiian Electric’s future procurements, the

State's RPS requirements, 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 PPAs 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 Hawaiian Electric's Stage 3 RFP 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 PPAs.

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, SD2 with proposed amendments. Thank you for this opportunity to testify.

Proposed Amendments to SB 1501 SD2

Hawaiian Electric respectfully requests adoption of all of the proposed amendments in the attached redline of SB 1501 SD2. These amendments emerged from extensive discussions with independent power producers ("IPPs") and the State. They reflect ongoing and cooperative efforts to design the bill in a manner that addresses the principal concerns of stakeholders.

- **Limiting recourse to the State:** by expressly identifying the department as the counterparty to a step-in agreement (as opposed to the State); making clear that the full faith and credit of the State is not pledged for the step-in agreements; providing that the department is not obligated to pay for any amounts in excess of moneys in the fund; providing for due diligence by the department of the IPP counterparties; and limiting judicial remedies in the case of a breach by the department to performance of the agreement.
- **Ensuring timely payment to IPPs:** by requiring payment under the step-in agreement be made "as and when due" under the covered power purchase agreement ("PPA"); establishing a reserve for payment to the IPPs to account for forecasting deviations; ensuring payment of PPAs has first priority status for revenues collected; and inclusion of termination payments if the utility terminates the PPA.
- **Avoiding financial impacts to ratepayers:** by reducing the risk exposure to IPPs and financing parties from Hawaiian Electric's sub-investment grade rating; refunding customers all collected and unused revenues upon termination of the step-in agreement; and minimizing administrative costs by requiring the department to execute an agency agreement with the utility.
- **Ensuring the bill does not benefit Hawaiian Electric:** by establishing the reserve as a separate account in the trust fund, inaccessible to the utility unless otherwise permitted by the department.

Additional proposed amendments were made for clarity and consistency purposes. We provide further explanation of the redline below.

I. Legislative Findings

The proposed amendments in Paragraphs 1, 3, and 4 of the legislative findings are principally for clarity and consistency purposes. The following explains Paragraphs 2, 5, 6, and 7.

Paragraph 2

~~—The procurement or purchase of energy from~~ replacement clean energy resources by a certain investor-owned electric utility and its electric utility subsidiaries is ongoing in its ~~stage~~Stage 3 request for proposals, and further anticipated in its first ~~integrated grid planning~~Integrated Grid Planning request for proposals ~~and other proposals.~~. These requests for proposals ~~implement~~set forth energy plans that ~~are~~have been developed through extensive engagement with local stakeholders and communities and reviewed and approved by the public utilities commission.— The legislature finds that successful ~~purchase~~procurement of ~~energy from~~ clean energy resources is in the public interest and necessary to avoid significant detrimental reliability and affordability impacts to electric utility customers.

The proposed amendments remove the references to the "purchase of energy" and "other proposals," which broaden the scope of this paragraph beyond resources procured through competitive bidding. This legislation is intended to apply only to certain power purchase agreements as discussed therein and developed through the competitive process under the Stage 3 and Integrated Grid Planning request for proposals for reasons explained below. The remainder of the proposed amendments in Paragraph 2 were made for clarity and consistency purposes.

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 to 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.

These proposed amendments were developed through consultation with the State and IPPs:

1. Based on feedback from the State, 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. In addition, the proposed amendments provide assurances to IPPs by indicating that payments will be made "as and when due" to IPPs under covered power purchase agreements.
3. Finally, the proposed amendments 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.

Paragraph 7 ("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.

Subparagraph 1:

1. Based on feedback from the State, the proposed amendments modify 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. In addition, the proposed amendments 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).

Subparagraph 2:

1. Based on feedback from the State, the proposed amendments 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. Based on feedback from the State, the proposed amendments ensure revenues from reserve fees are immediately deposited in the trust fund outside of utility use or control prior to any default event. As before, the power purchase charges (excluding the reserve fees) capitalize the fund after a default.

Subparagraphs 3 and 4: The proposed amendments to these paragraphs were made for clarity and consistency purposes.

II. Definitions

———"Investment grade status" means a credit rating for the electric utility's senior unsecured long-term debt obligations or an ~~issued~~issuer credit rating for the electric utility ~~(, in each case, not supported by~~without regard for third-party credit enhancements~~),~~ from at least two out of ~~the~~ three of the following:

The proposed amendments revert "issued" to "issuer" as "issuer credit rating" is a term of art. The remaining proposed amendments are for clarity.

———"Obligee" means any user, owner, or operator of the Hawaii electric system ~~that does not claim a tax credit for a project system under section 235-12.5 and~~ that is owed payment of power purchase costs by the electric utility under a power purchase agreement.

The proposed amendments remove the qualifying language requiring the obligee to not claim a tax credit under section 235-12.5. This is language is unnecessary because it is highly unlikely that any of the covered PPAs will be eligible for the tax credit. No Stage 3 projects are smaller than 5 megawatts, and it is not currently contemplated that there will be any projects smaller than 5 megawatts.

———"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 ~~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.

The proposed amendments re-insert the “July 1, 2025” date into the definitions for “power purchase agreement” and “power purchase costs.” Removal of this date could allow the step-in agreements to apply to all future *and past* power purchase agreements. It is unnecessary for the step-in agreements to apply to existing power purchase agreements, as those agreements already have financing. This legislation provides a limited solution that would apply only until our credit rating improved.

~~—~~ “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.~~

The proposed amendments independently define reserve fees and power purchase charges, and define the term “power purchase charges” to exclude “reserve fees.” This edit was based on feedback from the State to segregate the reserve fees and ensure that the utility could not independently draw on or utilize revenue of reserve fees.

1. The proposed amendments define “revenue” as excluding all taxes or government fees, rather than including that language within the definition of “power purchase charges,” given the edit separating “reserve fees” and “power purchase charges”.
2. For the “step-in agreement” definition, and based on feedback from the State, the proposed amendments make clear that the payment obligation is limited solely to the revenues from power purchase charges and reserve fees of covered power purchase agreements.
3. The remainder of the proposed amendments were for consistency.

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; provided that before entry into any agreement, the department may conduct due diligence ~~on a prospective obligee. 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, including through communication with the prospective obligee, on the prospective obligee. 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 for any obligations pursuant to the terms of the~~ step-in agreement. In any action concerning a breach by the department of the step-in agreement, the sole remedy available to an obligee against the department shall be an order directing specific performance 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.

1. Consistent with other edits based on feedback from the State, the 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. Based on feedback from the IPPs, the 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 indicated that the legislation should address recovery of termination costs to address concerns of financing parties. To be clear, Hawaiian Electric does not have any intention of ever terminating these power purchase agreements. It is therefore highly unlikely that any termination fees will need to be paid. However, for the purposes of ensuring lowest-cost PPAs, the proposed amendments modify the end of this subsection to address this issue.
4. Based on feedback from the State, the proposed amendments limit the only judicial remedy against the department to specific performance of the agreement.
5. The remaining edits are proposed for clarity and consistency.

~~_____ (b) _____~~ The department shall enter into a step-in agreement ~~for each covered~~ only if the power purchase agreement. subject to the step-in agreement arises from the Stage 3 request for proposals under docket number 2017-0352 before the public utilities commission or the first Integrated Grid Planning request for proposals issued under docket number 2024-0258 before the public utilities commission. The department shall enter into a step-in agreement when the power purchase agreement subject to the step-in agreement is executed, or if the power purchase agreement has already been executed as of July 1, 2025, as soon as reasonably possible.

The proposed amendments re-insert the language deleted from (b) stating that the subject power purchase agreement must arise from the Stage 3 or Integrated Grid Planning request for proposals. We do not think it is necessary or desirable that the legislation encompass additional power purchase agreements. The legislation is intended to address current concerns due to the utility's credit rating. In addition, expanding the PPAs covered under the legislation would increase the size of the reserve, which goes against the intent to limit the impact to ratepayers.

~~_____ (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 amendment, based on feedback from the State, allows for termination of the step-in agreement upon the agreement of the department and the utility, in addition to agreement of the IPP.

~~_____ (e) _____~~ 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, 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. The additional language clarifies the operation of the vesting mechanism in subsection (h).

~~_____ (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 revenue 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 revenues shall not be subject to appropriation for any other purpose. The revenue, if held in a depository other than the state treasury, The 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, based on feedback from the IPPs, ensure that all transfer of title of revenues to the department shall be free of encumbrances, and make clear that the utility shall continue to bill charges and reserve fees after default as an agent of the department. This ensures continuity of payment and minimization of administrative costs. The remainder are proposed for clarity and consistency.

~~_____ (h) _____~~ Except in Prior to default or an entry of an order of relief 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), based on feedback from the IPPs, ensure greater precision as to the reference to an order of relief under bankruptcy law. The remainder are proposed for clarity and consistency (e.g. ensuring application to a successor of the utility, and establishing precisely when vesting of revenues occurs).

~~_____ (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, based on feedback from the State, replace the department with the public utilities commission, as the commission possesses the 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 and department, which had been unaccounted for in S.D.2. The remainder are proposed for clarity and consistency.

~~_____ (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 based on feedback from the State on the companion House bill, HB 974 HD1.

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

(a) ~~—If~~ After the obligee provides notice to the department of a default of a covered power purchase agreement, the department shall promptly 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
- ~~—~~ (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 based on feedback from the IPPs.

1. The insertion of the word "promptly" ensures timely enforcement of the step-in agreement through prompt performance by the utility, and the department, of their obligations under the step-in agreement.
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 provides additional 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; provided that 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 clarity and consistency.

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

~~(a) — There is established outside the state treasury the power purchase costs trust fund, to be administered by the department, into which. 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.~~

1. These proposed amendments ensure consistency with those proposed edits already mentioned (e.g. distinguishing power purchase charges and reserve fees; making clear that payments from the fund are made without appropriation or allotment).

2. There are two proposed amendments to § 269-D(d). 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. We also propose amending the type of "subsidy" to "surcharge", and for consistency with the remainder of the statute.

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 fee~~ reserve 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 are based on feedback by the State as to treatment of the reserve.

1. The proposed amendments provide that the reserve account is established and maintained by the department; that the electric utility may deposit revenues from the reserve fees only in the department's account; that the utility cannot otherwise transfer or assign or sell those revenues; and that the utility then cannot access the account or use those revenues within unless directed to do so, as agent by the department.

2. The proposed amendment to § 269-E(b) allows the department to recover the administrative costs of maintaining the reserve account.
3. 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 amendments 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. In any action concerning a breach by the department of the agency agreement, the sole remedy available to an electric utility against the department shall be an order directing specific performance of the agency agreement.~~

1. This proposed amendment, based on feedback from the IPPs, 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.
2. The remainder of the subsection was struck because of the prior proposed amendments expressly addressing recovery of administrative costs.
3. Based on feedback from the State, the proposed amendments also provide that the sole remedy for the department breaching the agency agreement is specific performance of the agreement.

The remainder of the edits in Section 269-F were for consistency and 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
2 to enable the development of affordable clean energy resources
3 for the benefit of utility customers in the State.— Many
4 existing generating units in ~~Hawaii~~the State will need to be
5 retired in the next few years due to obsolescence and

1 environmental permitting requirements.— The impending
2 retirement of these units makes it urgent to obtain replacement
3 resources, without which the reliability of ~~electrical~~electric
4 supplies in the State will be at risk.— In addition,
5 continued reliance on these aging units, even if feasible,
6 would result in increased costs for utility customers and
7 continued reliance on fossil fuels, contrary to the State's
8 policy to transition to renewable, non-carbon-emitting
9 resources.

10 —The procurement ~~or purchase~~ of ~~energy from~~
11 replacement clean energy resources by a certain investor-owned
12 electric utility and its electric utility subsidiaries is
13 ongoing in its ~~stage~~Stage 3 request for proposals, ~~and~~ further
14 anticipated in its first ~~integrated grid planning~~Integrated
15 Grid Planning request for proposals ~~and other proposals.~~ .
16 These requests for proposals ~~implement~~set forth energy plans
17 that ~~are~~have been developed through extensive engagement with
18 local stakeholders and communities and reviewed and approved by
19 the public utilities commission.— The legislature finds that
20 successful ~~purchase~~procurement of ~~energy from~~ clean energy
21 resources is in the public interest and necessary to avoid
22 significant detrimental reliability and affordability impacts
23 to electric utility customers.

24 —The legislature ~~also~~further finds that the
25 development of clean energy resources by independent power
26 producers is essential to achieve the State's goals of one
27 hundred per cent net electricity sales from renewable sources

1 by 2045, a zero emissions economy by 2045, and greater energy
2 security and energy diversification, as established by the
3 Hawaii ~~State Planning Act~~state planning act and existing public
4 utility laws.

5 ~~—~~The legislature ~~further~~also finds that continued
6 development of clean energy resources requires adequate
7 assurances ~~to independent power producers that prompt and~~
8 ~~full~~that payments for purchased power will be made,
9 ~~irrespective of~~ to independent power producers as and when due
10 by the ~~financial strength of an electric~~ utility. ~~—~~ under power
11 purchase agreements. The current sub-~~investment~~-~~grade~~ status
12 of a certain investor-owned electric utility and its
13 subsidiaries, arising from the tragic events that occurred in
14 the 2023 Maui wildfires, has led independent power producers,
15 and those who would otherwise finance renewable energy
16 projects, to raise concerns about the reliability of payment by
17 the utility and its subsidiaries under ~~new~~ power purchase
18 agreements. ~~—~~ procured through the Stage 3 and Integrated Grid
19 Planning requests for proposals. Those concerns may cause
20 independent power producers to cancel renewable energy projects
21 or increase the prices they would charge for deliveries to
22 address this perceived credit risk. ~~—~~ Either outcome would be
23 contrary to the interests of electric utility customers in the
24 State.

25 ~~—~~The legislature further finds that the public
26 interest ~~could~~would be served ~~by the State providing limited~~
27 ~~credit support through~~ if the department of budget and finance

1 enters into "step-in agreements, ~~under~~" with independent power
2 producers, pursuant to which the ~~State will~~ department of budget
3 and finance would agree to make payments to ~~independent power~~
4 ~~producers in the event of~~ independent power producers after a
5 ~~default in payment failure~~ by an electric utility. ~~These~~
6 ~~agreements can~~ to make required payments pursuant to the terms
7 of the power purchase agreements. The department of budget and
8 finance's obligation to make payments pursuant to the terms of
9 a step-in agreement is limited solely to the revenues
10 associated with a power purchase agreement subject to a step-in
11 agreement. Neither the full faith and credit of the State, nor
12 any other moneys of the State, will be pledged for any
13 obligations under a step-in agreement.
14 The legislature finds that step-in agreements may provide
15 assurances ~~to independent power producers that prompt and full~~
16 that payments for purchased power will be made. ~~to independent~~
17 power producers as and when due by the utility under the covered
18 power purchase agreements. The legislature also finds that the
19 intent of this Act is further served by appointing, authorizing,
20 and empowering the electric utility to serve as the billing,
21 collection, payment, and management agent of the ~~State.~~
22 ~~— The legislature also finds that the State's~~
23 ~~obligations in connection with step-in agreements do not~~
24 ~~constitute contingent liabilities of the State pursuant to~~
25 ~~article VII, section 13, clause 8, of the Hawaii State~~
26 ~~Constitution, because the State will be vested with all~~
27 ~~ownership of and title to revenues resulting from on-bill~~

1 ~~charges for power purchase costs, and the full faith and credit~~
2 ~~of the State will not be pledged for obligations under these~~
3 ~~step-in agreements. In the event of a default by an electric~~
4 ~~utility on its payment obligations, these revenues would cover~~
5 ~~all payment obligations of the State for electric energy and~~
6 ~~related products. In the absence of default, the electric~~
7 ~~utility will be authorized to utilize these~~ department of budget
8 and finance. Prior to a payment default by the electric
9 utility, the electric utility will be authorized to utilize
10 such revenues to discharge its obligations to pay independent
11 power producers for electric energy and related
12 products.— The obligations of the State department of budget
13 and finance under this Act are undertaken for a public purpose,
14 namely, the protection of public health, safety, and welfare by
15 supporting the development of clean energy resources that are
16 needed for the reliable provision of electric supply at a
17 reasonable cost.

18 — Therefore, the purpose of this Act is to:

19 — (1) — ~~Allow~~ Require the State department of budget and
20 finance to enter into a step-in ~~agreements for payment~~
21 ~~obligations arising~~ agreement with an independent power
22 producer under ~~new power purchase agreements entered into~~
23 ~~between an investor-owned electric utility and its regulated~~
24 ~~subsidiaries~~ which the department of budget and finance will
25 agree to make required payments to the independent power
26 ~~producers~~ producer after a failure by the electric utility to

1 make required payments pursuant to the terms of a power
2 purchase agreement;

3 ~~—— (2) —~~ Establish a trust fund ~~within~~outside the ~~State~~state
4 treasury, that shall be capitalized ~~immediately~~by revenues from
5 a surcharge supporting a reserve account and, in the event of a
6 default ~~to fulfill state-backed payment obligations arising, by~~
7 revenues from power purchase ~~agreements subject to step~~charges,
8 in ~~agreements;~~

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

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

20 ~~—— (4) —~~ Appoint, authorize, and empower ~~an~~the electric
21 utility to serve as the billing, collection, payment, and
22 management agent of the department of budget and finance ~~into~~
23 implement the ~~service~~requirements of ~~performing step-in~~
24 agreementsthis Act.

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

1 third-party credit enhancements), from at least two out of the
2 three of the following:

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

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

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

9 "Obligee" means any user, owner, or operator of the
10 Hawaii electric system ~~that does not claim a tax credit for a~~
11 ~~project system under section 235-12.5 and~~ that is owed payment
12 of power purchase costs by the electric utility under a power
13 purchase agreement.

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

23 "Power purchase charges" means the on-bill charges, ~~including~~
24 excluding reserve fees, authorized by the public utilities
25 commission to be imposed on and collected from all existing and
26 future customers of an electric utility or any successor
27 for ~~power purchase costs,~~ including but not limited to

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

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

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

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

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

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

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

12 ~~— §§ 269-B — Step-in agreements. —~~

13 (a) ~~—~~ The department shall enter into a step-in agreement
14 with an obligee that requires the department to make ~~prompt and~~
15 ~~full~~ payments for power purchase costs owed by an electric
16 utility to the obligee in the event of a default; provided that
17 before entry into any agreement, the department may conduct due
18 diligence ~~on a prospective obligee. Notwithstanding any other~~
19 ~~provision in this part to the contrary, a step-in agreement~~
20 ~~shall also obligate the department to pay claims of the obligee~~
21 ~~from moneys in the fund arising out of the termination of a~~
22 ~~covered power purchase agreement by the electric utility under~~
23 ~~bankruptcy law. Upon, including through communication with the~~
24 prospective obligee, on the prospective obligee. Pursuant to
25 such step-in agreement and upon the default, the department
26 shall make payments to the obligee for power purchase costs
27 with moneys from the fund as and when due by the electric

1 utility under the covered power purchase agreement. ~~The;~~
2 provided that any such step-in agreement shall ~~not be an~~ provide
3 that the department's payment obligation ~~for which~~ thereunder
4 shall be solely limited to the revenues from power purchase
5 charges and reserve fees collected in connection with covered
6 power purchase agreements. Each step-in agreement shall
7 include a clause stating that neither the full faith and credit
8 of the State ~~is~~ nor any other moneys of the State will be
9 pledged, and for any obligations pursuant to the terms of the
10 step-in agreement. In any action concerning a breach by the
11 department of the step-in agreement, the sole remedy available
12 to an obligee against the department shall be an order
13 directing specific performance of the step-in agreement. An
14 obligee of a covered power purchase agreement shall have no
15 claim or lien on any ~~revenues or~~ moneys of the State, except
16 for those revenues from the power purchase charges and reserve
17 fees attributable to ~~the covered power purchase~~
18 ~~agreement~~ covered power purchase agreements. An obligee shall
19 remain entitled to all payments for power purchase costs owed
20 under the covered power purchase agreement, whether or not the
21 revenues from power purchase charges attributable to the
22 covered power purchase agreement are timely collected.
23 Notwithstanding anything to the contrary in this part, a step-
24 in agreement shall also obligate the department to pay claims
25 of the obligee from moneys in the fund arising out of
26 termination of a power purchase agreement by the electric
27 utility under bankruptcy law.

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

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

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

23 ~~(e)~~ Following a default of a covered power purchase
24 agreement and any payment by the department, the electric
25 utility, through agreement with all obligees of its covered
26 power purchase agreements, may elect to resume payments for
27 power purchase costs owed by the electric utility, regardless

1 of the credit rating of the electric utility at that time, in
2 which case the electric utility ~~may use the revenue from power~~
3 ~~purchase charges as specified~~ shall cease to turn over revenues
4 from power purchase charges collected in connection with the
5 covered power purchase agreement to the power purchase costs
6 trust fund as described in section 269-C(a), and may use the
7 revenues from power purchase charges through the vesting of
8 title in the electric utility as described in subsection (h);
9 provided that the payments shall not terminate the step-in
10 agreement, which shall remain in effect until terminated
11 pursuant to subsection (d), and the department shall remain
12 obligated to pay the obligee upon a subsequent ~~payment~~ default
13 by the electric utility.

14 ~~_____ (f) —~~ The department may impose other conditions, and
15 may include other terms, in a step-in agreement that ~~the~~
16 department it deems necessary to implement the requirements of
17 this part; provided that the conditions and terms shall not
18 adversely affect the obligation of the department to make
19 prompt and full payments for power purchase costs owed by an
20 electric utility to ~~an~~ the obligee as and when due ~~to~~ in the
21 event of a default as required ~~under subsection~~ by section 269-
22 B(a) or otherwise be inconsistent with the covered power
23 purchase agreement.

24 ~~_____ (g) —~~ As consideration for the State department
25 entering into the step- in agreement, the electric utility or
26 its successor shall enter into an agreement to assign and
27 transfer ~~any ownership in and~~ title to the ~~revenue~~ revenues from

1 power purchase charges and reserve fees attributable to the
2 covered power purchase agreement to the department, ~~and, under~~
3 ~~the agreement, the department shall be deemed to be the sole~~
4 ~~holder~~held in trust ~~of all ownership and title to the revenue~~
5 for the benefit of the obligees under the covered power
6 purchase agreements to the extent of the ~~obliges are~~amounts
7 ~~owed.~~ to such obligees. The ~~revenue~~assignment and transfer
8 of title to the revenues by the electric utility shall be made
9 and remain for the term of the step-in agreement free and clear
10 of any prior lien, pledge, security interest, or encumbrance of
11 any kind, and shall be exempt from section 269-19. The
12 revenues shall not be subject to appropriation for any other
13 purpose. ~~The revenue, if held in a depository other than the~~
14 ~~state treasury,~~ The revenues shall be exempt from the
15 requirements of chapters 36 and 38. ~~—~~ The electric utility or
16 its successor shall be and remain at all times, even upon the
17 occurrence and during the continuance of a default by the
18 electric utility or its successor, obligated to bill and
19 collect the power purchase charges and ~~to~~reserve fees and
20 manage the ~~revenue attributable to the agreement~~associated
21 revenues as an agent for the department to effectuate the
22 purposes of this part.

23 ~~— (h) — Except in~~ Prior to default or an entry of an
24 order of relief with respect to the ~~case of any bankruptcy~~
25 ~~filing by an~~ electric utility under Title 11 of the United
26 States Code, if any payment obligation of the electric utility
27 under a covered power purchase agreement for power purchase

1 costs becomes owed and due, any ~~ownership of or~~ title held by
2 the department in trust to the ~~revenue~~revenues from power
3 purchase charges for the payment obligation owed and due shall
4 divest from the department and vest in the electric utility or
5 its successor at the time the payment by the electric utility
6 or its successor is made to the obligee.— Any vesting of
7 revenues to the electric utility ~~when~~at the time of payment
8 ~~obligations are owed and due~~ may be made without appropriation
9 ~~or allotment~~ by the legislature.— or allotment. The
10 department ~~may~~shall not otherwise assign, sell, or transfer any
11 ~~ownership of, or~~ title to, or any claim or right to, the
12 ~~revenue~~revenues from power purchase charges.— or reserve fees.

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

25 ——— (j) — Notwithstanding any other law to the contrary,
26 ~~an~~the electric utility shall file with the public utilities
27 commission, and the public utilities commission shall allow to

1 become effective, monthly rate adjustments provided under the
2 energy cost recovery clause and purchased power adjustment
3 clause to establish or adjust power purchase charges in a
4 manner designed to:

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

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

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

16 To achieve the objectives established pursuant to this
17 subsection, unless the public utilities commission otherwise
18 directs, the electric utility may retain ~~revenue~~revenues
19 collected from power purchase charges in excess of amounts owed
20 and due under the covered power purchase

21 ~~agreement.~~agreements. The obligations of the electric
22 utility and of the public utilities commission under this
23 section shall survive any default by the electric utility and
24 shall terminate only upon the termination of the step-in
25 agreement as provided in subsection (d).~~—~~

26 ~~_____~~ (k) ~~_____~~ If the electric utility fails to timely file
27 any submission as described in subsection (j), the department

1 shall promptly file, or direct the electric utility to promptly
2 file pursuant to section 269-F(a), and the public utilities
3 commission shall allow to become effective, a substitute
4 submission as if the submission had been filed by the electric
5 utility under subsection (j).—The electric utility shall
6 implement the power purchase charges in the substitute
7 submission from the department.

8 ~~§§ 269-C~~ Default of electric utility; successor
9 requirements.

10 (a) ~~If~~ After the obligee provides notice to the
11 department of a default of a covered power purchase agreement,
12 the department shall promptly provide the electric utility
13 notice of the default.—Two days after the electric utility
14 receives the notice, the electric utility shall turn over all
15 revenues from the power purchase charges and reserve fees
16 arising from any covered power purchase agreements identified
17 in the notice, regardless of when collected, then in its
18 possession, and, subject to section 269-B(e), all future
19 revenues from the power purchase charges and reserve fees
20 thereafter collected, to the fund ~~as directed by the~~
21 ~~department; provided that the~~ established pursuant to section
22 269-D(a). These amounts shall include all revenues received by
23 the electric utility after a default for such power purchase
24 charges and reserve fees billed before the default ~~that were~~
25 ~~intended to be used to pay power purchase costs arising from~~
26 ~~the covered power purchase agreement.~~—The department shall
27 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-
4 ~~in 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 ~~—— (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~~
11 ~~of the electric utility or the department incurred to~~
12 ~~implement 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
18 collect and remit the revenues from power purchase charges and
19 reserve fees pursuant to the requirements of this part shall
20 not be subject to any setoff, counterclaim, surcharge, or
21 defense by the electric utility, or in connection with a
22 bankruptcy of any electric utility.

23 ~~—— (d) —~~ Any successor to an electric utility shall be
24 bound by the requirements of this part. ~~——~~ The successor shall
25 perform and satisfy all obligations of the electric utility in
26 the same manner and to the same extent as the electric utility,
27 including the obligation upon default to bill and collect the

1 power purchase charges and reserve fees and remit to the fund
2 the revenues collected ~~revenue to the department~~ in connection
3 with any covered power purchase agreement, unless and until the
4 step-in agreement is terminated as described in section ~~269-~~
5 B(d).

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

22 ~~§§ 269-D~~ Power purchase costs trust fund.

23 (a) ~~There is established outside the state treasury the~~
24 power purchase costs trust fund, ~~to be administered by the~~
25 department, ~~into which.~~ The electric utility shall ~~be~~
26 ~~deposited~~ deposit into the fund all ~~proceeds of the~~

1 ~~power~~ revenues collected in connection with covered power
2 purchase agreements from

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

6 ~~_____~~ (2) Reserve fees.

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

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

23 ~~_____~~ (d) ~~_____~~ The department shall be under no obligation to
24 make payment to any obligee if in excess of the moneys in the
25 fund ~~are depleted.~~ ~~_____~~ Any default or failure by the department
26 to make payments pursuant to the terms of a step-in agreement
27 under this part shall not result in any recourse by the electric

1 utility or obligee to any funds of the State other than the
2 revenues derived from power purchase charges and the
3 ~~subsidy~~surcharge for the reserve account collected and on
4 deposit in the fund.

5 ~~§§ 269-E—Power purchase costs reserve fee~~ Reserve
6 account; establishment.—

7 (a)—~~By August 1, 2025, the public utilities commission shall~~
8 authorize ~~a surcharge~~surcharges proposed by an electric
9 utility, referred to as ~~the power purchase costs reserve fee,~~
10 ~~the revenue from which shall be accorded the same treatment as~~
11 ~~revenue from power purchase charges as described in section~~
12 ~~269-B(g).~~ ~~The power purchase costs reserve fee~~reserve fees.

13 Reserve fees may be included in the purchased power adjustment
14 clause on customer bills. The department shall establish and
15 maintain a separate account to accept and account for revenues
16 from reserve fees as part of the fund established under section
17 269-D, and the electric utility shall promptly deposit all
18 revenues collected from reserve fees into the account. The
19 electric utility shall not otherwise assign, sell, or transfer
20 any title to, or any claim or right to, the revenues from
21 reserve fees, except as provided under this part. The electric
22 utility shall not access the reserve account or utilize the
23 revenues deposited therein, except as directed by the
24 department pursuant to section 269-F(e).

25 ~~(b)—The power purchase costs reserve fee~~ Reserve
26 fees shall be collected and maintained to establish a reserve
27 account in an amount not to exceed the total of fifteen per

1 cent of the forecasted monthly power purchase costs of all
2 covered power purchase agreements. plus an amount sufficient to
3 recover costs related to administration of the reserve account
4 and any applicable taxes and fees.

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

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

20 ~~— (e) —~~ (d) In the special circumstances of this part,
21 the legislature finds and declares that the reasonable reserve
22 requirement of article VII, section 13, clause 8 of the Hawaii
23 State Constitution, to the extent applicable, has been
24 satisfied.

25 ~~— §§ 269-F —~~ Electric utility; agent of the
26 department.

1 **(a)**— To implement the requirements of this part, the
2 department ~~may~~shall contract with an electric utility or its
3 successor to act as an agent of the department to provide
4 billing, collection, payment, management, and other related
5 services ~~on terms and conditions that reasonably compensate the~~
6 ~~electric utility or its successor for its incremental cost to~~
7 ~~provide services, and adequately secure payment to the~~
8 ~~department.~~ In any action concerning a breach by the
9 department of the agency agreement, the sole remedy available
10 to an electric utility against the department shall be an order
11 directing specific performance of the agency agreement.

12 **(b)**— At the request of the department, the public
13 utilities commission shall order an electric utility or its
14 successor to perform the duties pursuant to a contract under
15 subsection (a).

16 **(c)**— The act of serving as an agent to bill and to
17 collect the power purchase charges and reserve fees shall not
18 cause any electric utility to be subject to the laws that
19 regulate financial institutions, escrow depositories, or
20 collection agencies.— An electric utility shall not be
21 responsible for lending, underwriting, and credit
22 determinations in respect to these billing and collection
23 activities.

24 **(d)**— To the extent any ~~moneys~~revenues are received
25 by an electric utility pursuant to subsection (a) ~~or section~~
26 ~~269-B(g),~~ in the process of collection, and pending their
27 transfer to the ~~department,~~ fund pursuant to section 269-D(a),

1 those moneys necessary to timely and fully pay amounts when
2 owed and due under covered power purchase agreements shall be
3 held in trust for the department's exercise of its obligations
4 pursuant to this part.

5 ~~— (e) —~~ To implement the requirements of this part, the
6 director of finance may appoint, authorize, and empower the
7 electric utility, as agent for and on behalf of the
8 ~~State~~department, to manage and pay out moneys, including from
9 the fund, for fulfillment of payment obligations of the
10 ~~State~~department arising from covered power purchase
11 agreements.— The appointment shall terminate when the step-in
12 agreement ~~for the covered power purchase agreements terminates~~
13 ~~pursuant to~~ is terminated as described in section 269-B(d)."

14 ~~—~~SECTION 3.— If any provision of this Act, or the
15 application thereof to any person or circumstance, is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the
19 provisions of this Act are severable.

20 ~~—~~SECTION 4.— In codifying the new sections added by
21 section ~~—~~2 of this Act, the revisor of statutes shall
22 substitute appropriate section numbers for the letters used in
23 designating the new sections in this Act.

24 ~~—~~SECTION 5.— This Act shall take effect ~~on May 13,~~
25 ~~2040~~ upon its approval.

1

INTRODUCED BY:

2

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 ~~Purchasing~~Purchase Costs Trust Fund.—Establishes that revenues from on-bill charges for power purchase agreements and ~~accompanying reserves~~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 ~~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.—(SD2)~~

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

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Clearway Energy Group
100 California St, Suite 650
San Francisco, CA 94111



March 10, 2025

Via Electronic Submittal

Committee on Energy & Environmental Protection
Representative Nicole E. Lowen, Chair
Representative Amy A. Perruso, Vice Chair

Tuesday, March 11, 2025; 9:00 a.m.
Conference Room 325 & Videoconference

RE: SB 1501 SD2– Relating to Energy – In Support

Aloha Chair Lowen, Vice Chair Perruso, and members of the Committee:

Clearway Energy Group LLC (“Clearway”) supports SB 1501 SD2, which allows the State to enter into step-in agreements to ensure continuity of payments under certain power purchase agreements.

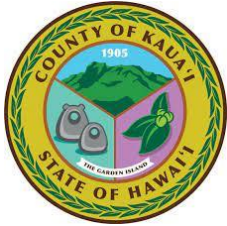
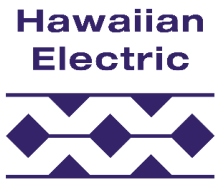
Clearway is one of the largest suppliers of renewable energy to Hawaiian Electric and its customers. Clearway owns and operates four solar energy projects on Oahu and has three additional projects under development that were awarded in Hawaiian Electric’s Stage 3 Renewable RFP. Our projects provide clean, 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 SD2 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 SB 1501 SD2.

Thank you for the opportunity to testify on this matter.

Nicola Park
Director, Hawaii
Clearway Energy Group



CATHOLIC CHARITIES HAWAII



Par Hawaii

HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION

March 11, 2025, 9:00 a.m., Room 325

Testimony in strong support of SB 1501 HD2

Aloha Chair Lowen, Vice Chair Perruso, and members of the Committee:

As partners of Climate Hawai'i, an initiative of the Hawai'i Executive Collaborative (HEC), we strongly support SB 1501 SD2, 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:

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



Representative Nicole Lowen, Chair
Representative Amy Perruso, Vice Chair
Committee on Energy & Environmental Protection

Tuesday, March 11, 2025; 9:00 a.m.
Conference room 325 & Videoconference

RE: SB 1501 SD2 – Relating to Energy – In Support

Aloha Chair Lowen, Vice Chair Perruso 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 SD2. 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 SD2 and ask that you give the measure your favorable consideration.

Mahalo,

A handwritten signature in black ink, appearing to read "Wren W. Wescoatt", written in a cursive style.

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



201 Spear St, Ste 1000
San Francisco, CA 94105
P: 832-585-1238
pluspower.com

Representative Nicole Lowen, Chair
Representative Amy Perruso, Vice Chair
Committee on Energy & Environmental Protection

March 11, 2025; 9:00 a.m.
Conference room 325 & Videoconference

RE: SB 1501 SD2 Relating to Energy – In Support

Aloha Chair Lowen, Vice Chair Perruso and members of the Committee:

Plus Power appreciates this opportunity to submit testimony in support of SB 1501 SD2, 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 SD2 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



111 Speen Street, Suite 410
Framingham, MA 01701

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

Ameresco.com

TESTIMONY TO THE COMMITTEE ENERGY & ENVIRONMENTAL PROTECTION
9:00 AM, March 11, 2025
Conference Room 325 & Via Videoconference

SB 1501 SD2

Chair Lowen, Vice Chair Perruso, and Members of the Committee,

Ameresco **strongly supports** SB 1501 SD2, 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 renewable energy projects.

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 completion of these projects hinges on successful financing, which in turn depends on the passage of this bill.

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 with additional capacity to be placed in service by 2033, which is critical to grid reliability and resilience. Proposals were submitted to Hawaiian Electric in April of 2023 with preset rates, 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. The proposed rates submitted in April 2023 are not adjustable, which results in non-viable projects.

Several IPP projects have already withdrawn from the Stage 3 procurement. 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 future renewable energy 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. There are no other large renewable projects "in the works" beyond the Stage 3 projects.

SB1501 SD2

As currently drafted, SB1501 SD2 will help ensure the financing and construction of future renewable projects, by allowing the State to enter into step-in agreements with the IPPs and make payments required under the PUC approved PPAs. These step-in-agreements will instill greater lender confidence that the payments will continue to be made even in the event of a Hawaiian Electric bankruptcy, making the projects financeable.

To effectively mitigate financial risk of the lenders, participation in step-in agreements must be mandatory, not optional or discretionary. 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. The bill recognizes all parties must agree and formally execute the terms of the agreement and we request that the committee consider inserting a specified time for swift completion of due diligence.

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. Because the IPP contracts are approved by the Public Utilities Commission for the benefit of the ratepayers and authorizes the recovery of the full costs of the projects from the ratepayers, the reserve fund is an interim stopgap, covering shortfalls in cost recovery timing and forecast reconciliation and can also be used to credit ratepayers. 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. Ameresco is aware that various parties have suggested further amendments and defers to the State and Hawaiian Electric on those refinements.

Thank you for the opportunity to provide this testimony in support of SB1501 SD2.



HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

March 11, 2025, 9:00 A.M.

Conference Room 325 and videoconference

TESTIMONY IN STRONG SUPPORT OF SB 1501 SD2

Aloha Chair Lowen, Vice Chair Perruso, and members of the Committee:

Blue Planet Foundation **strongly supports SB 1501**, a critical measure to ensure the continued financing and development of affordable clean energy projects in Hawai'i. This bill offers a timely, necessary, and forward-thinking mechanism—step-in agreements and a dedicated Power Purchase Costs Trust Fund—to provide assurances to independent power producers (IPPs) and their lenders amidst utility credit concerns, ultimately protecting Hawai'i's energy future and ratepayers.

Proposed amendment: *Blue Planet believes that community-based renewable energy projects should be included along with IPPs to qualify for the step-in agreement and trust fund.*

Blue Planet Foundation is a Honolulu-based 501(c)(3) committed to helping Hawai'i cut its dangerous carbon emissions and avoid the worst impacts of climate change. We leverage the power of locally driven policy change and awareness to create momentum and inspire broader societal shifts to protect our climate in Hawai'i and beyond.

Hawai'i is at a pivotal juncture. With aging fossil fuel plants approaching retirement and new utility-scale renewable energy projects in development under Hawaiian Electric's Stage 3 and Integrated Grid Plan procurements, it is essential that financing for these projects remains viable. Unfortunately, Hawaiian Electric's current sub-investment-grade credit rating—largely resulting from the tragic Maui wildfires—has created a major financing barrier. Lenders now require higher interest rates or impose more restrictive terms, leading to higher power prices or project cancellations.

Senate Bill 1501 addresses this challenge head-on by creating a mechanism for the Department of Budget and Finance to "step in" and make payments to IPPs in the event of a utility default. This limited and clearly defined credit backstop helps reassure financiers without putting general taxpayer funds at risk. Importantly:

- The proposed trust fund will be capitalized by existing ratepayer revenues already collected under on-bill charges, not general fund appropriations.
- Step-in agreements do not constitute contingent liabilities under the State Constitution.

info@blueplanetfoundation.org

55 Merchant Street 17th Floor • Honolulu, Hawai'i 96813 • 808-954-6161 • blueplanetfoundation.org

- The bill ensures that if such a mechanism is ever triggered, revenues will be available to maintain uninterrupted payments and energy delivery.
- A reserve fund component, while modest in cost to ratepayers, further strengthens the mechanism's reliability.

It's critical to note that this measure is ultimately about ensuring that ratepayers continue to benefit from competitively priced renewable energy that would otherwise be jeopardized by external credit market forces. Without this bill, project developers may withdraw or increase their PPA prices significantly—outcomes that would burden families and businesses across Hawai'i.

Blue Planet appreciates the Legislatures proactive leadership on this measure. Senate Bill 1501 supports critical climate, energy security, and economic goals by enabling the timely buildout of clean energy infrastructure. We urge the Committee to advance this measure and help secure Hawai'i's clean energy future.

Thank you for the opportunity to provide testimony.



Uploaded via Capitol Website

March 11, 2025

TO: HONORABLE NICOLE LOWEN, CHAIR, HONORABLE AMY PERRUSO, VICE CHAIR, COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION.

SUBJECT: **SUPPORT THE INTENT OF S.B. 1501, RELATING TO ENERGY.** Allows the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements. Establishes the Power Purchasing Costs Trust Fund. Establishes 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 shall hold a beneficial interest in the revenue and reserve to the extent of the amounts owed under the covered power purchase agreements. Appoints, authorizes, and empowers 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. Effective 5/13/2040.

HEARING

DATE: Tuesday, March 11, 2025
TIME: 9:00 a.m.
PLACE: Capitol Room 325

Dear Chair Lowen, Vice Chair Perruso and Members of the Committees,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA **supports the intent** of S.B. 1501 SD2, which allows the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements. Establishes the Power Purchasing Costs Trust Fund. Establishes 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 shall hold a beneficial interest in the revenue and reserve to the extent of the amounts owed under the covered power purchase agreements. Appoints, authorizes, and empowers 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.

The State has a policy goal of 100% renewable by 2045. This measure will help the state reach its goal by encouraging continued investment in renewable energy projects by providing assurances to power project developers. Further, the reduced risks associated with the passage of



**GENERAL
CONTRACTORS
ASSOCIATION
OF HAWAII**

this measure will lead to lower project costs, which will ultimately lead to lower costs for ratepayers.

Thank you for the opportunity to testify in support of the intent of this measure.

QUALITY PEOPLE. QUALITY PROJECTS



March 10, 2025

TESTIMONY TO THE COMMITTEE ENERGY & ENVIRONMENTAL PROTECTION

9:00 AM, March 11, 2025

Conference Room 325 & Via Videoconference

SB 1501 SD2

Chair Lowen, Vice Chair Perruso, and Members of the Committee,

Nexamp **supports** SB1501 SD2 and offers comments which would confirm that the State Office of Budget and Finance should 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 benefiting Hawaii's Low-To-Moderate-Income (LMI) ratepayers. HECO has selected Nexamp 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 CBRE projects requires the same financial treatment as utility scale Stage 3 projects and Integrated Grid Planning (IGP) projects as described in previous versions of SB 1501.

We appreciate that SB1501 SD2 confirms 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 provided in this bill 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 "Brad Albert".

Brad Albert

Nexamp Director of Business Development