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OFFICE OF THE PUBLIC DEFENDER

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

WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 974, H.D. 1

February 20, 2025
12:00 p.m.
Room 308 and Videoconference

RELATING TO ENERGY

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

House Bill (H.B.) No. 974, H.D. 1, adds a new part to Chapter 269, HRS, to:

- 1) require B&F to enter into a step-in agreement for payment obligations arising under power purchase agreements (PPA) entered into from an electric utility and its regulated subsidiaries and independent power producers (IPPs) in the event of a default;
- 2) establish the Power Purchase Costs (PPC) Trust Fund (PPCTF) outside of the State Treasury for B&F to collect revenues and make payments under a step-in agreement;
- 3) authorize a PPC reserve fee (PPCRF) to be collected and transmitted to the PPCTF and, in the event of a default by an electric utility, by revenues from power purchase charges associated with covered PPAs (CPPA); and 4) appoints, authorizes, and empowers the 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.

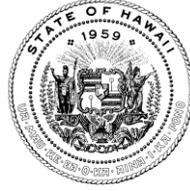
B&F would like to point out several issues with this draft. First, it is unclear whether the proposed PPCTF would be self-sustaining even after the deposit of surcharge revenues from PPCRFs given the potential overall financial state of the electric utility should a default occur.

Second, the language added in the H.D. 1, establishes a priority for use of PPCTF revenues to first pay PPCs pursuant to step-in agreements, next for any incremental administrative costs of the utility or B&F incurred to implement proposed Section 269-C, HRS, then only last to implement a rate credit to customers. B&F believes that because IPPs are the ones receiving the benefits of being assured payment under a step-in agreement, they should be responsible for the administrative costs of the PPCTF, not the ratepayers. B&F further notes that B&F does not have any budgeted funds to front the necessary administrative expenses in the situation where the PPCTF does not have an excess balance allowing it to be used for second priority costs at the time of default of a CPPA.

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

- The bill mandates B&F to enter into step-in agreements with no discretion to determine whether doing so is in the best interests of the State under the circumstances.
- The bill mandates the Public Utilities Commission to authorize PPCRF surcharges with no discretion to determine whether doing so is in the best interest of the State and the ratepayers under the circumstances.
- The bill may create liability on the part of B&F and the State. Prior to any significant statutory amendments, studies should be carried out to determine the appropriate contingencies and policies necessary to protect the State and its interests as it continues its transition onto clean energy.

Thank you for your consideration of our comments.



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DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Finance
Thursday, February 20, 2025
12:00 p.m.
Conference Room 308**

**On the following measure:
H.B. 974, H. D. 1, RELATING TO ENERGY**

Chair Yamashita 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) require the Department of Budget and Finance to enter into step-in agreements for payment obligations arising under certain power purchase agreements; (2) establish the Power Purchase Costs Trust Fund; (3) establish that revenues from on-bill charges for 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 to the extent of the amounts owed under the covered power purchase agreements; and (4) appoint, authorize, and empower 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.

As discussed in greater detail below, the Department largely supports this legislation because it *may* enable lower energy costs than would be possible without the legislation, and *may* facilitate incorporating more renewable energy onto the electrical system by addressing concerns raised by some independent power producers (IPPs) of renewable energy projects that their lenders are concerned that Hawaiian Electric would be allowed to stop paying IPPs for the energy that they provided to Hawaiian Electric if Hawaiian Electric were to go bankrupt.¹ However, the Department believes that the legislation can achieve the above goals and address lenders' concerns without increasing customer rates by:

- Zeroing out the amount of fifteen percent of the forecasted monthly power costs of all covered power purchase agreements in Revised Statutes (HRS) § 269-E "Reserve Account establishment"; and
- Prohibiting the recovery of administrative costs for the Power Purchase Trust Fund and reserve account, from ratepayers (e.g., as proposed in §§ 269-B(J), 269-C(a)(3), and 269-E(b)).

The Department notes that the proposed HRS § 269-B "Step-in agreements"; § 269-C "Default of electricity utility; successor requirements,"; § 269-D "Power purchase costs trust fund," and § 269-F "Electric utility; agent of the department" together form the components of the legislation that enable the State, through the Department of Budget and Finance, to step-in and make payments to IPPs using revenues that are already currently being collected from ratepayers through an existing surcharge . These provisions of the bill assure that IPPs will continue to be fully compensated if Hawaiian Electric was to go bankrupt.

¹ See e.g., Ameresco's written Testimony to the Committee on Energy and Environmental Protection regarding HB 974, stating,

HB 974 will assist in ensuring that the remaining Stage 3 renewable energy projects are able to continue moving forward by removing a project lenders' major concerns regarding Hawaiian Electric's current credit rating: namely, that in a bankruptcy proceeding Hawaiian Electric would be allowed to stop paying IPPs for the energy that they generated and provided to Hawaiian Electric.

However, proposed HRS § 269-E “Reserve Account establishment,” serves as a cushion to pay IPPs if the forecasted monthly power purchase cost is under collected through the surcharge. The Department believes that Hawaiian Electric Company and IPPs operating in the State must bring evidence and analyses that sufficiently demonstrates the need for the Reserve account and the proposed amount and conclusively shows that there will be some positive impact for ratepayers by allowing the reserve account. Until that time, the Department respectfully posits that the appropriate amount of reserve could be significantly below the fifteen percent of the forecasted monthly power purchase costs if not zero.

Thank you for the opportunity to testify on this bill.



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

ON THE FOLLOWING MEASURE:

H.B. NO. 974, H.D. 1, RELATING TO ENERGY.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 20, 2025 **TIME:** 12:00 p.m.

LOCATION: State Capitol, Room 308

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

Chair Yamashita 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 Department of Budget and Finance (B&F), 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 Purchase 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 B&F.*** The bill **requires** B&F to enter into "step-in agreements" with the IPPs. Under a step-in agreement, B&F is required to make payments for power purchase costs owed by an electric utility to an independent power producer in the event of a default by the electric utility under its power purchase agreement with the IPP. "The department **shall** enter into a step-in

agreement with an obligee that **requires** the department to make payments for power purchase costs owed by an electric utility to the obligee in the event of a default." See page 10, lines 5-8 (emphases added).

2. ***Elimination of discretion by the Public Utilities Commission.*** The bill **requires** that the Public Utilities Commission (PUC) authorizes surcharges to be included in electric utility customer bills and that the PUC allows monthly rate adjustments to become effective upon a filing by the electric utility with the PUC. "By August 1, 2025, the public utilities commission **shall** authorize surcharges proposed by an electric utility, referred to as reserve fees. Reserve fees may be included in the purchased power adjustment clause on customer bills." See page 20, lines 15-19.
3. ***Creation of a Reserve Account 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 account 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 21, lines 6-11) 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 plus an amount sufficient to recover costs related to administration of the reserve account and any applicable taxes and fees. Currently, any shortfall in the utility's forecasted monthly power purchase costs is currently covered by the utility. Establishing a reserve account and implementing a surcharge (paid by the customers) to fund such an account provides an additional source of revenue for the utility, at the expense of its customers, which additional revenue source can be used by the utility to fulfil its payment obligations in case the utility forecasts incorrectly.
4. ***The IPPs Should Pay for the Administrative Costs Related to Implementing the Step-In Agreements.*** This bill provides that the ratepayers pay for the administrative costs relating to the step-in agreements. See page 21, lines 9-11. Since the step-in agreements directly benefit the IPPs, we believe that the IPPs

and not the ratepayers should be responsible for the payment of administrative costs of this program. To effectuate this suggestion, we recommend the following:

- (a) Page 13, lines 1-5, amend section 269-B(f) to read: "(f) The department may impose other conditions, and may include other terms, in a step-in agreement that it deems necessary to implement the requirements of this part, including the payment of administrative expenses by the independent power producer; provided that the conditions and terms shall not be inconsistent with the covered power purchase agreement."
- (b) Page 18, lines 1-3, delete section 269-C(a)(2): "~~[(2) To recover any incremental administrative costs of the utility or the department incurred to implement the requirements of this part;]~~ and"
- (c) Page 21, lines 6-11, amend section 269-E(b) to read: "(b) 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."

- 5. ***The Department of Budget and Finance is Required to Take Affirmative Actions.*** Section 269-B(k) of the bill at page 16, lines 10-17, ***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.
- 6. ***The Reasonable Reserve Requirement Is Not Necessary.*** Section 269-E(d) at page 21, line 18, to page 22, line 2, refers to the reasonable reserve requirement of article VII, section 13, clause 8 of the Hawaii Constitution. That provision is only applicable if B&F were to make a loan to the electric utility under the step-in agreement. Since no loan is contemplated by this bill, section 269-E(d) is not necessary and should be deleted.

7. **Potential State Liability.** Any obligation of B&F pursuant to a step-in agreement should 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 13, lines 6-21. 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 10, line 5, to page 11, line 14. In all circumstances, we need to ensure that any default or failure to make payments by B&F pursuant to the terms of a step-in agreement does not result in any recourse by the utility or an IPP to any money of the State other than the revenues derived from power purchase charges and the subsidy for the reserve account collected and on deposit in the trust fund established by B&F.

We respectfully ask the Committee to consider our comments.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



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Testimony of the Public Utilities Commission

To the
House Committee on
Finance

February 20, 2025
12:00 p.m.

Chair Yamashita, Vice Chair Takenouchi, and Members of the Committee:

Measure: H.B. No. 974, H.D. 1
Title: RELATING TO ENERGY.

Position:

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

Comments:

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

The Commission is aware of the concerns surrounding Independent Power Producer ("IPPs") financing cost increases and market uncertainty created by Hawaiian Electric's non-investment grade credit rating. The Commission closely monitors the Stage 3 Request for Procurement process (Docket No. 2017-0352) and meets regularly with the Independent Observer on the status of all projects. IPPs in their ongoing Power Purchase Agreement ("PPA") negotiations with Hawaiian Electric have sought higher prices than previous rounds to offset their increased financing costs caused by Hawaiian Electric's PPA default risk. Hawaiian Electric in response has sought to find ways to accommodate IPPs to balance ratepayer electricity costs and developer economics. IPPs bidding into the forthcoming Integrated Grid Plan RFP ("IGP 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. In the worst-case scenario, if IPPs are not paid for their renewable energy, the IPP may shut down operations which would result in a loss of that renewable energy source.

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

Thank you for the opportunity to testify on this measure.



Representative Kyle Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair
Committee on Finance

February 20, 2025; 12:00 p.m.; Agenda #2
Conference Room 308 & Videoconference

RE: HB 974 HD1 – Relating to Energy – In Support

Aloha Chair Yamashita, Vice Chair Takenouchi 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 HB 974 HD1. 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 HB 974 HD1 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

Representative Kyle Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair
Committee on Finance

February 20, 2024; 12:00 p.m.
Conference room 308 & Videoconference

RE: HB 974 HD1 Relating to Energy – In Support

Aloha Chair Yamashita, Vice Chair Takenouchi and members of the Committee:

Plus Power appreciates this opportunity to submit testimony in support of HB 974 HD1, 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. HB 974 HD1 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



HAWAII REGIONAL COUNCIL OF CARPENTERS

February 20, 2025

TO: The Honorable Kyle T. Yamashita, Chair
The Honorable Jenna Takenouchi, Vice Chair
and Members of the House Committee on Finance

FROM: Mitchell Tynanes
Hawai'i Regional Council of Carpenters

RE: **Strong Support for HB974 HD1– Relating to Energy**

Aloha Chair Yamashita, Vice Chair Takenouchi, and Members of the Committee,

On behalf of the Hawai'i Regional Council of Carpenters (HRCC), I submit this testimony in **strong support of HB974**, which 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.

As the largest construction labor organization in the state, representing thousands of working men and women in Hawai'i, we believe this legislation is critical to consistent reliable energy. We believe in a clean energy future for all of Hawai'i.

Hawai'i urgently needs to expand affordable, clean energy generation and storage to stabilize the grid and replace aging fossil fuel power plants. To achieve this, the State must take action to restore the ability to finance power purchase agreements with Hawaiian Electric.

Due to Hawaiian Electric's financial distress and credit downgrade following the Maui wildfires, financing renewable energy projects has been challenging. Financing is a major driver of costs for new energy generation and storage, so without a solution, ratepayers will ultimately face higher electricity costs.

HB 974 HD1 aims to address this issue by leveraging state authority to ensure that payments under power purchase agreements remain uninterrupted—even in the event of a bankruptcy or financial crisis affecting the utility. Mahalo for considering our testimony in support.

Mitchell Tynanes
Hawai'i Regional Council of Carpenters

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TESTIMONY TO THE COMMITTEE ON FINANCE

12:00 PM, February 20, 2025
Conference Room 308 & Via Videoconference
HB 974 HD1

Chair Yamashita, Vice-Chair Takenouchi and Members of the Committee,

Ameresco **strongly supports** HB 974 HD1, which requires the Department of Budget and Finance to enter into step-in agreements for payment obligations arising under certain power purchase agreements.

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 project in ‘Ewa. We currently have three additional large-scale renewable energy projects in development on O‘ahu and Maui.

HB 974 HD1 is essential for ensuring the resilience and reliability of Hawaii’s energy infrastructure by addressing the challenges faced by independent power producers (IPPs) such as Ameresco in obtaining financing for renewable energy power purchase agreements (PPAs) with Hawaiian Electric due to the recent downgrading of Hawaiian Electric’s credit rating.

Background

In January 2023, Hawaiian Electric solicited renewable energy project bids through its “Stage 3” Request for Proposals (RFP). The goal of the RFP was to procure 800-1,200 MW of renewable energy projects that would be placed in service by the end of 2029 (and additional capacity to be placed in service by 2033), which is critical to reliability and resilience. Proposals were submitted to Hawaiian Electric in April of 2023 and projects were awarded in November 2023. Between the time that the proposals were submitted and awarded, however, Hawaiian Electric’s credit rating had been 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.

Several IPPs have already withdrawn their Stage 3 projects. Additionally, many planned Stage 2 projects have also terminated or been delayed. It is in the public interest to ensure that the remaining projects are able to obtain financing and come online – not only to ensure that Hawai‘i is able to meet its climate and renewable energy goals, in which these Stage 3 projects play a critical role, but also for the integrity and reliability of the electric grid, and to ensure affordable rates to the ratepayers of Hawai‘i that are not tied to volatile fossil fuel prices. Hawaiian Electric’s only other current renewable energy procurement is the Integrated Grid Planning (IGP) procurement. However, the IGP procurement has been delayed pending a

contested case proceeding before the Public Utilities Commission, just now commencing. There are no other large renewable projects “in the works” beyond the Stage 3 projects.

Benefits of HB 974 HD1

HB 974 HD1 will assist in ensuring that the remaining Stage 3 renewable energy projects are able to continue moving forward by removing a project lenders’ major concerns regarding Hawaiian Electric’s current credit rating: namely, that in a bankruptcy proceeding Hawaiian Electric would be allowed to stop paying IPPs for the energy that they generated and provided to the ratepayers. This risk is making it difficult to obtain the financing needed to advance these projects. HB 974 HD1 directly addresses this concern by ensuring that in the event that Hawaiian Electric stops meeting its contractual payment obligations with IPPs, then the Department would essentially step in to Hawaiian Electric’s shoes and pay IPPs for the power they produced and delivered to the grid– not out of the State’s own funds but rather out of money that Hawaiian Electric, as authorized by the Public Utilities Commission, collects for these contracts.

While it is unlikely that this scenario will come to pass, the fact that this nondiscretionary legal mechanism exists gives lenders significant confidence in making investments in proposed renewable projects and significantly increases IPPs’ ability to obtain financing for these projects.

Conclusion

As previously stated, HB 974 HD1 is a forward-looking and necessary measure to ensure an increased amount of renewable energy is added to the grid, strengthen Hawaii’s energy infrastructure, safeguard its renewable energy progress, and protect consumers and stakeholders. The bill’s provisions align with the state’s commitment to energy security, sustainability, and economic stability.

We urge the committee to pass HB 974 HD1.

Thank you for the opportunity to provide testimony.





Email: communications@ulupono.com

HOUSE COMMITTEE ON FINANCE
Thursday, February 20, 2025 — 12:00 p.m.

Ulupono Initiative supports HB 974 HD 1, Relating to Energy.

Dear Chair Yamashita and Members of the Committee:

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

Ulupono supports HB 974 HD 1, which 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 Purchase Costs Trust Fund; establishes that revenues from on-bill charges for power purchase agreements and revenues from a surcharge supporting a reserve amount shall be held in trust by the State, and that independent power producers shall hold a beneficial interest in the revenues to the extent of the amounts owed under the covered power purchase agreements; appoints, authorizes, and empowers 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.

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

Investing in a Sustainable Hawai'i

proposed, should help to ensure that independent power producers remain confident in the financial viability of their projects. This prevents potential project cancellations or escalated costs due to credit concerns, ultimately protecting customers from issues with reliability and affordability.

3. Providing Financial Stability Amidst Utility Credit Challenges

Following the tragic Maui wildfires, concerns about the financial strength of Hawaiian Electric Company and its subsidiaries have raised risks of increased prices or project cancellations. The proposed step-in agreements allow the State to act as a limited credit backstop, ensuring payment obligations are met. Importantly, these agreements do not constitute contingent liabilities under the State Constitution, protecting public finances while addressing credit concerns.

4. Leveraging Existing Revenue Streams

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

5. Strengthening Energy Security and Diversification

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

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

Thank you for the opportunity to testify.

Respectfully,

Mariah Yoshizu
Government Affairs Associate



**Hawaiian
Electric**

TESTIMONY BEFORE THE HOUSE COMMITTEE ON FINANCE

HB 974, HD1 Relating to Energy

Thursday, February 20, 2025
12:00PM
State Capitol, Conference Room 308

Rebecca Dayhuff Matsushima
Vice President, Resource Procurement
Hawaiian Electric

Dear Chair Yamashita, Vice Chair Takenouchi, and Members of the Committee,

My name is Rebecca Dayhuff Matsushima and I am testifying on behalf of Hawaiian Electric in **strong support** of HB 974, HD1, Relating to Energy, and offering amendments.

HB 974, HD1 would provide significant support to Hawaiian Electric's customers by helping to avoid higher-cost contracts with independent power producers ("IPPs") and helping to ensure the successful development of new renewable energy projects, thereby promoting system reliability. Hawaiian Electric appreciates the amendments in HB 974, HD1 that clarify the bill's language to further minimize risk to the State and also strengthen the assurance that IPPs will receive payment.

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

Both of these outcomes result in detrimental effects to Hawaiian Electric customers.

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

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

This bill aims to address these risks for a limited number of developers negotiating power purchase agreements for new projects. The bill provides for the department of budget and finance to enter into a "step-in" agreement to pay those IPPs in the unlikely event that the utility defaults. The department would make those payments using specific revenues collected from utility customers, consistent with existing law under which the utility recovers 100% of the costs of power purchase agreements in retail rates. The bill explicitly states that the State's credit and funds would not be used and that all payment obligations for the covered power purchase agreements would be paid solely from customer revenues designated to pay such

power purchase agreement costs.

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. 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 term of their contracts. The reserve fee will be returned to customers once the utility regains its investment-grade credit rating.

Hawaiian Electric strongly believes in the benefits that this solution can provide to customers. Based on Hawaiian Electric's review of HD1 and feedback from IPPs, Hawaiian Electric would like to respectfully suggest additional improvements to this bill, as shown in the attached redline.

Hawaiian Electric believes that the customer benefits provided by this bill far outweigh the costs imposed. Given current conditions, Hawaiian Electric also believes that this bill offers the best solution to address developers' financing concerns.

Accordingly, Hawaiian Electric strongly supports HB 974, HD1 with proposed amendments. Thank you for this opportunity to testify.

REVISED:
1ST DRAFT DATE:

____.B. NO.____

A BILL FOR AN ACT

RELATING TO ENERGY.

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

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

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

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

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

15 The legislature also finds that continued development of
16 clean energy resources requires adequate assurances that
17 payments for purchased power will be made to independent power
18 producers as and when due by the utility under power purchase
19 agreements. The current sub-investment-grade status of a
20 certain investor-owned electric utility and its subsidiaries,
21 arising from the tragic events that occurred in the 2023 Maui
22 wildfires, has led independent power producers, and those who
23 would otherwise finance renewable energy projects, to raise
24 concerns about the reliability of payment by the utility and

1 its subsidiaries under power purchase agreements procured
2 through the Stage 3 and Integrated Grid Planning requests for
3 proposals. Those concerns may cause independent power
4 producers to cancel renewable energy projects or increase the
5 prices they would charge for deliveries to address this
6 perceived credit risk. Either outcome would be contrary to the
7 interests of electric utility customers in the State.

8 The legislature further finds that the public interest
9 would be served if the department of budget and finance enters
10 into "step-in agreements" with independent power producers,
11 pursuant to which the department of budget and finance would
12 agree to make payments to the independent power producers after
13 a failure by an electric utility to make required payments
14 pursuant to the terms of the power purchase agreements. The
15 department of budget and finance's obligation to make payments
16 pursuant to the terms of a step-in agreement is limited solely
17 to the revenues associated with a power purchase agreement
18 subject to a step-in agreement. Neither the full faith and
19 credit of the State, nor any other moneys of the State, will be
20 pledged for any obligations under a step-in agreement.

21 The legislature finds that step-in agreements may provide
22 assurances that payments for purchased power will be made to
23 independent power producers as and when due by the utility
24 under the covered power purchase agreements. The legislature

1 also finds that the intent of this Act is further served by
2 appointing, authorizing, and empowering the electric utility to
3 serve as the billing, collection, payment, and management agent
4 of the department of budget and finance. Prior to a payment
5 default by the electric utility, the electric utility will be
6 authorized to utilize such revenues to discharge its
7 obligations to pay independent power producers for electric
8 energy and related products. The obligations of the department
9 of budget and finance under this Act are undertaken for a
10 public purpose, namely, the protection of public health,
11 safety, and welfare by supporting the development of clean
12 energy resources that are needed for the reliable provision of
13 electric supply at a reasonable cost.

14 Therefore, the purpose of this Act is to:

15 (1) Require the department of budget and finance to enter
16 into a step-in agreement with an independent power producer
17 under which the department of budget and finance will agree to
18 make required payments to the independent power producer after
19 a failure by the electric utility to make required payments
20 pursuant to the terms of a power purchase agreement;

21 (2) Establish a trust fund outside the state treasury,
22 that shall be capitalized by revenues from a surcharge
23 supporting a reserve account and, in the event of a default, by
24 revenues from power purchase charges, in each case associated

1 with covered power purchase agreements, for the fulfillment of
2 payment obligations arising from the power purchase agreement;

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

10 (4) Appoint, authorize, and empower the electric utility
11 to serve as the billing, collection, payment, and management
12 agent of the department of budget and finance to implement the
13 requirements of this Act.

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

17 **"PART. STEP-IN AGREEMENTS COVERING POWER PURCHASE COSTS**

18 **§ 269-A Definitions.** As used in this part:

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

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

1 "Default" does not mean a bankruptcy filing by an electric
2 utility.

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

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

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

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

14 "Investment grade status" means a credit rating for the
15 electric utility's senior unsecured long-term debt obligations
16 or an issuer credit rating for the electric utility, in each
17 case, without regard for third-party credit enhancements, from
18 at least two out of three of the following:

19 (1) BBB- or higher for S&P Global Ratings, or any
20 successor by law;

21 (2) BAA3 or higher by Moody's Investor Services, Inc., or
22 any successor by law; or

23 (3) BBB- or higher by Fitch Ratings, Inc., or any
24 successor by law.

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

4 "Power purchase agreement" means a contract between an
5 electric utility and a user, owner, or operator of the Hawaii
6 electric system, approved by the public utilities commission,
7 pursuant to which the electric utility agrees to purchase, and
8 the user, owner, or operator of the Hawaii electric system
9 agrees to sell, electric energy and related products produced
10 by plants or facilities that have not provided, sold, or
11 transmitted electricity to the electric utility before July 1,
12 2025.

13 "Power purchase charges" means the on-bill charges,
14 excluding reserve fees, authorized by the public utilities
15 commission to be imposed on and collected from all existing and
16 future customers of an electric utility or any successor for
17 power purchase costs, including but not limited to the energy
18 cost recovery clause and the purchased power adjustment clause.

19 "Power purchase costs" means costs incurred by an electric
20 utility pursuant to the terms of a power purchase

21 agreement. ~~"Power purchase costs" includes~~ including without
22 limitation, costs such as termination payments payable by an
23 electric utility in connection with the termination of a power
24 purchase agreement as a result of a default by such electric

1 utility thereunder. "Power purchase costs" include, without
2 limitation, all categories of costs recoverable under the
3 energy cost recovery clause and the purchased power adjustment
4 clause under ~~its~~their respective tariffs in effect on July 1,
5 2025.

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

11 "Reserve fees" means the surcharges described in section
12 269-E(a).

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

17 "Step-in agreement" means a contract by which the
18 department undertakes the obligation of payment for power
19 purchase costs owed to an obligee as and when due by an
20 electric utility under a power purchase agreement following a
21 default, as described in section 269-B(a); provided that the
22 department's payment obligation under such step-in agreement is
23 limited solely to the revenues from power purchase charges and

1 reserve fees collected in connection with ~~the~~ covered power
2 purchase agreements.

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

5 **§ 269-B Step-in agreements**

6 (a) The department shall enter into a step-in agreement
7 with an obligee that requires the department to make payments
8 for power purchase costs owed by an electric utility to the
9 obligee in the event of a default. Pursuant to such step-in
10 agreement and upon the default, the department shall make
11 payments to the obligee for power purchase costs with moneys
12 from the fund as and when due by the electric utility under the
13 covered power purchase agreement; provided that any such step-
14 in agreement shall provide that the department's payment
15 obligation thereunder shall be solely limited to the revenues
16 from power purchase charges and reserve fees collected in
17 connection with ~~the~~ covered power purchase agreements. Each
18 step-in agreement shall include a clause stating that neither
19 the full faith and credit of the State nor any other moneys of
20 the State will be pledged for any obligations pursuant to the
21 terms of athe step-in agreement. An obligee of a covered power
22 purchase agreement shall have no claim or lien on any moneys of
23 the State, except for those revenues from the power purchase
24 charges and reserve fees attributable to covered power purchase

1 agreements. An obligee shall remain entitled to all payments
2 for power purchase costs owed under the covered power purchase
3 agreement, whether or not the revenues from power purchase
4 charges attributable to the covered power purchase agreement
5 are timely collected. Notwithstanding anything to the contrary
6 in this part, a step-in agreement shall also obligate the
7 department to pay claims of the obligee from moneys in the fund
8 arising out of termination of a power purchase agreement by the
9 electric utility under bankruptcy law.

10 **(b)** The department shall enter into a step-in agreement
11 only if the power purchase agreement subject to the step-in
12 agreement arises from the Stage 3 request for proposals under
13 docket number 2017-0352 before the public utilities commission
14 or the first Integrated Grid Planning request for proposals
15 issued under docket number 2024-0258 before the public
16 utilities commission. The department shall enter into a step-
17 in agreement when the power purchase agreement subject to the
18 step-in agreement is executed, or if the power purchase
19 agreement has already been executed as of July 1, 2025, as soon
20 as reasonably possible.

21 **(c)** The payment obligation of the department under a step-
22 in agreement shall commence not later than two days after the
23 date of a notice from the department to the electric utility
24 pursuant to section 269-C(a).

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

8 **(e)** Following a default of a covered power purchase
9 agreement and any payment by the department, the electric
10 utility, through agreement with all obligees of its covered
11 power purchase agreements, may elect to resume payments for
12 power purchase costs owed by the electric utility, regardless
13 of the credit rating of the electric utility at that time, in
14 which case the electric utility shall cease to turn over
15 revenues from power purchase charges collected in connection
16 with the covered power purchase agreement to the power purchase
17 costs trust fund as described in section 269-C(a), and may use
18 the revenues from power purchase charges through the vesting of
19 title in the electric utility as described in subsection (h);
20 provided that the payments shall not terminate the step-in
21 agreement, which shall remain in effect until terminated
22 pursuant to subsection (d), and the department shall remain
23 obligated to pay the obligee upon a subsequent default by the
24 electric utility.

1 **(f)** The department may impose other conditions, and may
2 include other terms, in a step-in agreement that it deems
3 necessary to implement the requirements of this part; provided
4 that the conditions and terms shall not adversely affect the
5 obligation of the department to make prompt and full payments
6 for power purchase costs owed by an electric utility to the
7 obligee as and when due in the event of a default as required
8 by section 269-B(a) or otherwise be inconsistent with the
9 covered power purchase agreement.

10 **(g)** As consideration for the department entering into the
11 step-in agreement, the electric utility or its successor shall
12 enter into an agreement to assign and transfer title to the
13 revenues from power purchase charges and reserve fees
14 attributable to the covered power purchase agreement to the
15 department to be held in trust for the benefit of the obligees
16 under the covered power purchase agreements to the extent of
17 the amounts owed to such obligees. The assignment and transfer
18 of title to the revenues by the electric utility shall be made
19 and remain for the term of the step-in agreement free and clear
20 of any prior lien, pledge, security interest, or encumbrance of
21 any kind, and shall be exempt from section 269-19. The
22 revenues shall not be subject to appropriation for any other
23 purpose. The revenues shall be exempt from the requirements of
24 chapters 36 and 38. The electric utility or its successor

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

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

22 **(i)** To meet the requirements of the State and the public
23 utilities commission as they pertain to electric reliability,
24 energy security, and energy diversification under this chapter

1 and any rules adopted pursuant thereto, the electric utility
2 shall ensure that it maintains sufficient availability of
3 electric energy and related products, to the extent provided by
4 an obligee in accordance with a covered power purchase
5 agreement. The public utilities commission shall exercise its
6 regulatory powers to ensure that the electric utility complies
7 with its obligations under the covered power purchase
8 agreement.

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

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

19 (2) Ensure that in no event shall revenues fall below the
20 amounts owed and due under covered power purchase

21 agreements by a sum that exceeds the amounts in the ~~power~~
22 ~~purchase costs~~ reserve ~~fund~~account established under
23 section 269-E; and

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

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

14 (k) If the electric utility fails to timely file any
15 submission as described in subsection (j), the department shall
16 promptly file, and the public utilities commission shall allow
17 to become effective, a substitute submission as if the
18 submission had been filed by the electric utility under
19 subsection (j). The electric utility shall implement the power
20 purchase charges in the substitute submission from the
21 department.

22 § 269-C Default of electric utility; successor
23 requirements

1 (a) ~~If~~ Within two business days after the obligee provides
2 notice to the department of a default of a covered power
3 purchase agreement, the department shall provide the electric
4 utility notice of the default. Two days after the electric
5 utility receives the notice, the electric utility shall turn
6 over all revenues from the power purchase charges and reserve
7 fees arising from any covered power purchase agreements
8 identified in the notice, regardless of when collected, then in
9 its possession, and, subject to section 269-B(e), all future
10 revenues from the power purchase charges and reserve fees
11 thereafter collected to the fund established pursuant to
12 section 269-D(a). These amounts shall include all revenues
13 received by the electric utility after a default for such power
14 purchase charges and reserve fees billed before the default.
15 The department shall use the revenues collected from the power
16 purchase charges and reserve fees, including the revenues
17 turned over, only in the order as follows:
18 (1) To pay power purchase costs pursuant to step-in
19 agreements, subject to the appointment, authorization, and
20 empowerment of the electric utility as an agent as
21 described in section 269-F(e)~~);~~); and for revenues in
22 excess of amounts owed under covered power purchase
23 agreements. ;

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

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

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

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

14 (d) Any successor to an electric utility shall be bound by
15 the requirements of this part. The successor shall perform and
16 satisfy all obligations of the electric utility in the same
17 manner and to the same extent as the electric utility,
18 including the obligation upon default to bill and collect the
19 power purchase charges and reserve fees and remit to the fund
20 the revenues collected in connection with any covered power
21 purchase agreement, unless and until the step-in agreement is
22 terminated as described in section 269-B(d).

23 (e) If the step-in agreement is terminated as described in
24 section 269-B(d), then by operation of law, any title to the

1 revenues from power purchase charges and reserve fees
2 attributable to the covered power purchase agreement shall
3 immediately cease to be held in trust and the electric utility
4 or its successor shall thereafter be the sole holder of title
5 or beneficial and equitable interest in, and any claim or right
6 to, the revenue, and the obligation of the electric utility or
7 its successor to bill and collect the power purchase charges
8 and reserve fees and manage the revenues as an agent for the
9 department, and, if applicable, to remit the collected revenues
10 to the fund, shall terminate.

11 **§ 269-D Power purchase costs trust fund**

12 (a) There is established outside the state treasury the
13 power purchase costs trust fund to be administered by the
14 department. The electric utility shall deposit into the fund
15 all revenues collected in connection with covered power
16 purchase agreements from

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

19 (2) Reserve fees.

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

1 **(c)** If the step-in agreement is terminated as described in
2 section 269-B(d), the fund shall cease to receive any revenues
3 from the power purchase charges collected by the electric
4 utility or its successor and the department shall pay to the
5 electric utility or its successor the remainder of any moneys
6 in the fund attributable to power purchase charges. Those
7 moneys shall be considered revenues of the electric utility or
8 its successor.

9 **§ 269-E Reserve account; establishment.**

10 **(a)** By August 1, 2025, the public utilities commission
11 shall authorize surcharges proposed by an electric utility,
12 referred to as reserve fees. Reserve fees may be included in
13 the purchased power adjustment clause on customer bills. The
14 department shall establish and maintain a separate account to
15 accept and account for revenues from reserve fees as part of
16 the fund established under section 269-D, and the electric
17 utility shall promptly deposit all revenues collected from
18 reserve fees into the account. The utility shall not otherwise
19 assign, sell, or transfer any title to, or any claim or right
20 to, the revenues from reserve fees, except as provided under
21 this part.

22 **(b)** Reserve fees shall be collected and maintained to
23 establish a reserve account in an amount not to exceed the
24 total of fifteen per cent of the forecasted monthly power

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

4 (c) If the step-in agreement terminates pursuant to
5 section 269-B(d), reserve fees collected in connection with the
6 covered power purchase agreement shall cease to be collected,
7 and all moneys remaining in the fund attributable to the
8 reserve fees shall be returned in full, together with any
9 associated interest earned, to customers through a rate credit.

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

15 **§ 269-F Electric utility; agent of the department**

16 (a) To implement the requirements of this part, the
17 department ~~may~~shall contract with an electric utility or its
18 successor to act as an agent of the department to provide
19 billing, collection, payment, management, and other related
20 services.

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

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

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

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

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

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

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

9 SECTION 5. This Act shall take effect ~~on July 1, 3000~~upon
10 its approval.

11 INTRODUCED BY: _____

12 BY REQUEST

____.B. NO._____

Report Title:

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

Description:

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 Purchase Costs Trust Fund. Establishes that revenues from on-bill charges for 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 to the extent of the amounts owed under the covered power purchase agreements. Appoints, authorizes, and empowers 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 7/1/3000. (HD1)~~

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



February 19, 2025

Via Electronic Submittal

Committee on Finance
Representative Kyle T. Yamashita, Chair
Representative Jenna Takenouchi, Vice Chair

Thursday, February 20, 2025; 12:00 p.m.; Agenda #2
Conference Room 308 & Videoconference

RE: HB 974 HD1 Relating to Energy - Support

Aloha Chair Yamashita, Vice Chair Takenouchi, and members of the Committee:

Clearway Energy Group LLC ("Clearway") supports HB 974 HD1, 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.

HB 974 HD1 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. Based on feedback from experts in project financing, Clearway proposes the following amendments for consideration. Clearway also agrees with the amendments proposed by Hawaiian Electric in its testimony on HB 974 HD1.

1. Section 269-B(a): To clarify that power producers are not giving up any right to full payment, add the following language:

An obligee shall remain entitled to all payments 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.

Without this language, the text of this section limiting the department's obligation could be interpreted as saying that if the department was unable to pay the full amount due in a given month, there would be no further obligation to the power producer.

2. Section 269-B(d): The step-in agreement should terminate when the credit rating of the electric utility or its successor achieves investment-grade status and maintains this status for no less than six months. Since there is no provision to reinstate the step-in agreement after the utility achieves investment-grade status, banks that are financing clean energy projects will want to see the utility maintain this status for several months before the agreement terminates.
3. Section 269-B(g): To ensure that the revenues from power purchase charges are not at risk of being redirected to fulfil other utility obligations, the following language should be added:

The electric utility's assignment and transfer of title to the revenues shall be made free and clear of any prior lien, pledge, security interest, or encumbrance of any kind and shall be exempt from section 269-19.

4. Section 269-B(h): The first sentence should include the following language: 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,

Without this amendment, this paragraph would put revenues from power purchase charges at risk of being caught up in a bankruptcy proceeding.

5. Section 269-C(a): As currently written, this leaves an undefined timeframe between when a default occurs and when the step-in agreement is activated. The department should be obligated to provide notice to the utility within two business days, or alternatively, the obligee (rather than the department) should be required to provide the utility with the notice of default.
6. Section 269-F(a): The department should have the obligation, rather than the option, to contract with the utility to manage billing, collection, payment, management, and related services, since the department does not have the capability to carry out these functions itself.
7. Section 269-F(e): Avoiding commingling of funds owned by the department with funds owned by the utility, to the greatest extent possible, is very important in the context of bankruptcy. Neither Section 269-D nor Section 269-F directly state that the fund will be a standalone account and not commingled with other funds, although we understand that this is the intent. It would be helpful to include language in Section 269-F making clear that, if the utility is serving as the administrator of the trust fund, the trust fund will be segregated from other funds held by the utility.

Thank you for the opportunity to testify on this matter.

Nicola Park
Director, Hawaii
Clearway Energy Group

House Bill 974 HD 1 – Relating to Renewable Energy
TESTIMONY

Hawai'i State House of Representatives
House Committee on Finance
Thursday, February 20, 2025
12:00 p.m.

Aloha Chair Yamashita, Vice Chair Takenouchi and Members of the House Committee on Finance,

Mahalo for the opportunity to provide testimony in **support of HB 974 HD 1, relating to renewable energy**. AES is Hawai'i's largest renewable energy provider. We share the state's vision for a 100% renewable energy future to enhance energy resilience, decarbonization, and promote energy equity. We are working to accelerate and support Hawai'i's transition toward a carbon-free energy future with renewable projects across the Hawaiian Islands totaling over 405 MW of solar, solar plus storage, and wind resources in operation or under contract, with 102.5 MW of Stage 1 projects, 37 MW of Stage 2 projects, and 126 MW of Stage 3 projects.

The purpose of HB 974 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").

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 PPA's with HECO for utility-scale renewable energy projects are supported by the proposed step-in agreements and do not present a default risk. Furthermore, it is critical the department enter into the proposed step-in agreement in order 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 and IGP RFP.

If financing is not available, is limited or is extremely expensive for IPPs, this would result in project cancellations or major price increases from market PPA rates and would significantly delay the State's transition to 100% renewable energy and potentially raise consumer energy prices. It is important to note this bill will not burden ratepayers and is solely designed to ensure renewable energy projects with HECO in Hawai'i remain viable through financing.

AES Hawai'i submits the following amendments for consideration, which we believe will enhance financing opportunities and mitigate increased financing costs for renewable energy projects:

1. **Section 269-A Definitions:** The statute should clearly state that if the PPA is terminated by HECO during bankruptcy, the step-in agreement will obligate the department to make payments under PPAs as if the PPA is still in effect or pay the IPP's damage claim arising from such termination. Additionally, if the PPA provides for payment of a

termination payment after a HECO default, the statute should expressly provide that any termination payment due under the PPA is covered by the step-in agreement. This will be critical to lenders upon reviewing financing.

“Power purchase costs” means costs incurred by an electric utility pursuant to the terms of a power purchase agreement, including 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 such electric utility thereunder.

- 2. Section 269-B(a) Step-in agreements:** As mentioned previously, this will ensure the State is obligated to make damage and termination payments if HECO terminates the PPA in bankruptcy. This is a priority for lenders.

An obligee of a covered power purchase agreement shall have no claim or lien on any moneys of the State, except for those revenues from the power purchase charges and reserve fees attributable to covered power purchase agreements. 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.

- 3. Section 269-B(f):** Amend to specify that other terms and conditions imposed under the step-in agreement will not impede full and prompt payment of obligations under the agreement. 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 in the event of a default as required by Section 269-182(a) or otherwise be inconsistent with the covered power purchase agreement.

- 4. Section 269-B(h) Step-in agreements:** This language is necessary to ensure that after a default or in the event of bankruptcy filing by the electric utility, title to the revenues does not divest from the department and vest in the electric utility.

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

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

Mahalo for your consideration.

A handwritten signature in black ink, appearing to read "Sandra Larsen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Sandra Larsen
President
AES Hawai'i



TRANSFORMATIVE
COLLABORATION



HOUSE COMMITTEE ON FINANCE
February 20, 2025, Noon, Room 308

Testimony in strong support of HB 974 HD1

Aloha Chair Yamashita, Vice Chair Takenouchi, and members of the Finance Committee:

As partners of Climate Hawai'i, an initiative of the Hawai'i Executive Collaborative (HEC), we strongly support HB 974 HD1, 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 HB 974 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 HB 974

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

House Bill 974 provides a measured, financially responsible approach to securing Hawai'i's clean energy transition. By ensuring that renewable energy producers have confidence in their contractual payments, these policies will unlock investment, create local jobs, and accelerate clean energy deployment—all while keeping energy costs stable for Hawai'i's residents and businesses. As Climate Hawai'i partners, we strongly urge the Legislature to pass this policy to protect Hawai'i's energy future and uphold the state's commitment to 100% renewable energy by 2045.

Mahalo for your leadership and the opportunity to testify.

About the Hawai'i Executive Collaborative

The Hawai'i Executive Collaborative (HEC) is a nonprofit organization that serves as a convener and provides backbone support to leaders from different sectors who want to help build a more

resilient economy and state. HEC members believe in the power of acting collectively and focus their energies and resources on areas where immediate and systemic changes will benefit Hawai'i and the world. For more information on Climate Hawai'i's real-world, high-impact solutions, please visit climatehawaii.earth.

Climate Hawai'i partners supporting this testimony:

- Hawaiian Electric
- Kauai County
- Bowers + Kubota
- Chaminade University
- Zephyr Insurance
- Huanani Partners
- Blue Planet Foundation



February 20, 2025

TO: HONORABLE KYLE YAMASHITA, CHAIR, HONORABLE JENNA TAKENOUCI, VICE CHAIR, COMMITTEE ON FINANCE.

SUBJECT: **SUPPORT THE INTENT OF H.B.974 HD1, RELATING TO ENERGY.**
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 Purchase Costs Trust Fund. Establishes that revenues from on-bill charges for 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 to the extent of the amounts owed under the covered power purchase agreements. Appoints, authorizes, and empowers 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 7/1/3000. (HD1)

HEARING

DATE: Thursday, February 20, 2025
TIME: 12:00 p.m.
PLACE: Capitol Room 308

Dear Chair Yamashita, Vice Chair Takenouchi 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 H.B. 974 HD1, which 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 Purchase Costs Trust Fund. Establishes that revenues from on-bill charges for 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 to the extent of the amounts owed under the covered power purchase agreements. Appoints, authorizes, and empowers 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.

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

HB-974-HD-1

Submitted on: 2/19/2025 1:07:50 PM

Testimony for FIN on 2/20/2025 12:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Douglass Adams	Individual	Support	Written Testimony Only

Comments:

Chair Yamashita, Vice Chair Takenouchi, and Members of the Committee on Finance:

Thank you for the opportunity to testify in SUPPORT of HB974, which establishes a step-in protocol for payment obligations that may arise under certain power purchase agreements (PPA). PPA are becoming ever more frequent as a method for ensuring reliable renewable power is provided to customers in the State of Hawaii. The protocol envisioned in this bill establishes a degree of continuity and consistency that will help with maintaining the creditworthiness of the utility and stabilizing the costs assessed to customers.

I ask that the Committee approve this measure and send it with a favorable recommendation to the House of Representatives for its passage. Thank you for your consideration.

very respectfully,

Douglass Adams

Hilo