

A Bill for an Act Relating to Interisland Electric Transmission Cable Systems.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that attaining energy independence from imported fossil fuels is a long-standing objective of the State.

The legislature finds that interconnecting the islands via a high-voltage undersea electric transmission cable system would provide the islands with increased energy security and system efficiencies and enable the islands to provide each other with backup power.

The legislature further finds that interconnection would enable Hawaii to make better use of its abundant natural renewable energy resources such as wind, solar, and geothermal energy. An interisland undersea cable system has been identified as an effective and efficient means to introduce the variety of utility scale renewable energy available throughout the Hawaiian islands into a stable grid environment; to stabilize and equalize rates in all areas served by the cable; to increase Hawaii's energy independence; to support "increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased" and "greater energy security and diversification in the face of threats to Hawaii's energy supplies and systems"; and to support the achievement of the renewable portfolio standards established in section 269-92, Hawaii Revised Statutes, which requires twenty-five per cent of Hawaii's net electricity sales to come from renewable sources by 2020, increasing to forty per cent by 2030.

Despite these predicted benefits, none of the electric utility systems on any of the Hawaiian islands is interconnected with electric utility systems on any other island.

The purpose of this Act is to establish the regulatory structure under which interisland undersea transmission cables can be developed, financed, and constructed on commercially reasonable terms, such as those upon which successful cable projects have been undertaken in several locations around the world. Nothing in this Act is intended to require the construction of an interisland cable from any particular island.

This Act also amends other sections of the Hawaii Revised Statutes to reflect the existence of a separate and distinct entity transmitting power to and receiving revenue from an existing electric utility that is not owned or controlled by that electric utility.

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

"PART . INTERISLAND TRANSMISSION SYSTEM

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

"Cable acquisition cost" means the electric utility company's costs, including reasonable transaction costs, to acquire a high-voltage electric transmission cable system pursuant to a turnkey cable contract or a cable purchase contract.

"Cable company" means any person or persons, company, corporation, or entity that is selected through a request for proposals, or other process approved by the commission, to be a certified cable company applicant.

"Certified cable company" means any person or persons, company, corporation, or entity who owns or controls a high-voltage electric transmission

cable system and who receives a certificate of public convenience and necessity from the commission pursuant to section 269-B.

“Commercial operations” means the period after the high-voltage electric transmission cable system:

- (1) Passes acceptance tests approved by the commission, as determined by a qualified independent engineer approved by the commission; and
- (2) Meets other criteria the commission determines to be reasonable.

“Commercial operations date” means the date upon which the high-voltage electric transmission cable system begins commercial operations, as determined by the commission.

“Commission” means the public utilities commission.

“Cost-effective” has the same meaning as in section 269-91.

“Electric utility company” means a public utility as defined in section 269-1, for the production, conveyance, transmission, delivery, or furnishing of electric power.

“Electric utility system” means the electric system owned and operated by an electric utility company, including any non-utility owned facilities that are interconnected to the system, consisting of power plants, transmission and distribution lines, and related equipment for the production and delivery of electric power to the public.

“Energy resources coordinator” or “coordinator” means the director of business, economic development, and tourism.

“High-voltage electric transmission cable system” means one hundred twenty kilovolts or greater of alternating current or direct current transmission cables constructed undersea, including connected transmission cables or lines installed on land that connect the electric utility systems on two or more islands or allow for the transmission of power from one or more energy generation facilities to the electric utility system located on another island of the State; alternating current substation or alternating current-direct current converter station; on-island transmission infrastructure if required; fiber optic communication cables; and other appurtenant facilities.

“On-island transmission infrastructure” means the modifications and additions to the existing alternating current transmission grid on an island and other electric utility system modifications needed to reliably connect a high-voltage electric transmission cable system to an electric utility system, and to reliably accept power transmitted via the high-voltage electric transmission cable system connecting two or more islands of the State’s electric utility systems.

“Power purchase agreement” means an agreement between an electric utility company and the developer of an energy generation facility to sell the power generated by the facility to the electric utility company.

“Project-on-project financing risk” means the risk involved when mutually dependent projects, whose risk of completion, and therefore, financing, are dependent on each other.

“Renewable electricity” means electrical energy generated using renewable energy as the source.

“Renewable energy” has the same meaning as in section 269-91.

“Renewable energy generation facility” means a facility generating electrical energy using renewable energy as the primary source.

“Renewable portfolio standard” has the same meaning as in section 269-91.

“Request for proposals” means a request for proposals issued pursuant to a competitive process authorized, reviewed, and approved by the commission, and developed and conducted by the electric utility company or companies to which the capacity of a high-voltage electric transmission cable system will be

made available, with input and assistance from the state energy resources coordinator, to select a cable company.

§269-B Certification. (a) Prior to installing a high-voltage electric transmission cable system, a cable company shall be selected through a request for proposals, or other process approved by the commission. The selected cable company shall not commence commercial operations of the high-voltage electric transmission cable system until it is issued a certificate of public convenience and necessity by the commission pursuant to section 269-7.5. A certified cable company shall be subject to regulation by the commission and defined as a “public utility” under section 269-1, notwithstanding any law to the contrary.

(b) The electric utility company and the energy resources coordinator, or the energy resources coordinator’s designee, shall develop the request for proposals, and the energy resources coordinator or the energy resources coordinator’s designee shall be a member of the selection committee that will review and evaluate the proposals. The electric utility company shall suspend or terminate the request for proposals at the discretion of the commission.

(c) Notwithstanding any provisions in section 269-7.5 to the contrary:

- (1) The commission shall approve, disapprove, or approve subject to certain conditions, an application for a certificate of public convenience and necessity for a high-voltage electric transmission cable system, and shall issue a final order within one hundred eighty days after the application is filed, provided that the commission may extend the timeline as necessary;
- (2) In determining whether the cable company is financially fit, the commission may allow for the use of commercially reasonable non-recourse project financing for the high-voltage electric transmission cable system;
- (3) In determining whether the proposed transmission capacity service is or will be required by the present or future public convenience and necessity, the commission shall determine whether the high-voltage electric transmission cable system would be a cost-effective means of:
 - (A) Interconnecting two or more electric utility systems;
 - (B) Helping one or more electric utility companies meet the applicable renewable portfolio standard; or
 - (C) Achieving other considerations the commission may deem appropriate;
- (4) If the primary source or sources of the renewable electricity that will be transmitted to an electric utility company or companies using the high-voltage electric transmission cable system will be provided pursuant to a power purchase agreement or agreements between the electric utility company or companies and an owner or owners of a new renewable energy generation facility or facilities, in reviewing and approving the application for a certificate of public convenience and necessity, the commission shall, among other factors, take into consideration:
 - (A) The status of the power purchase agreement or agreements;
 - (B) The extent to which the project-on-project financing risk of the high-voltage electric transmission cable system and the associated renewable energy generation facilities is materially reduced through agreements between the certified cable company and the owner or owners of the renewable energy generation

- facilities holding the power purchase agreement or agreements, or through common ownership arrangements; and
- (C) The extent to which the certified cable company assumes financial responsibility for the high-voltage electric transmission cable system until both the cable system and the new generation facility or facilities have achieved commercial operations;
- (5) In the certification process, the commission shall review and determine ratemaking principles appropriate and applicable to the high-voltage electric transmission cable system during commercial operations. The ratemaking principles shall be used in determining the certified cable company's revenue requirement that is used to determine its transmission capacity charges, and may be used to fix the capital investment costs for the high-voltage electric transmission cable system upon which the certified cable company will be allowed to earn an authorized rate of return and the operating costs that may be included in the certified cable company's revenue requirement. Any applicable land costs shall be included in the determination of the certified cable company's revenue requirement;
- (6) In determining the authorized rate of return that will apply to a certified cable company, the commission may consider the risks assumed by the certified cable company related to or resulting from the planning, financing, construction, and operation of the high-voltage electric transmission cable system, including other factors deemed relevant and appropriate by the commission, such as the terms and conditions of the transmission tariff as may be approved by the commission; and
- (7) Prior to approving the application for a certificate of public convenience and necessity, the commission shall hold a public hearing on each island to be connected by the high-voltage electric transmission cable system to obtain input from the affected communities about the high-voltage electric transmission cable system.

§269-C Transmission tariff. The commission shall, by order, approve, disapprove, or approve subject to certain conditions, the tariff of the certified cable company pursuant to which the certified cable company shall make the capacity of its high-voltage electric transmission cable system available to the electric utility company or companies. The tariff shall be consistent with the tariff provisions provided in the request for proposals, unless otherwise ordered by the commission. The tariff shall specify the terms and conditions under which the certified cable company will be entitled to receive revenues collected through the cable surcharge, established pursuant to section 269-D. The certified cable company may submit its proposed tariff for approval prior to the expected commercial operations date, and the commission shall take final action on the proposed tariff within one hundred twenty days after submittal of the proposed tariff with supporting documentation as may be required by the commission; provided that the commission may extend the timeline as necessary.

§269-D Cable surcharge. (a) The commission shall establish a cable surcharge to allow recovery of the high-voltage electric transmission cable system costs designated for recovery according to the ratemaking principles pursuant to section 269-B.

(b) Pursuant to the transmission tariff, the commission shall, by order, designate the electric utility company or companies to which the capacity of the high-voltage electric transmission cable system shall be made available as the

agent of the certified cable company to collect the cable surcharge approved by the commission. The electric utility company or companies collecting the cable surcharge for the benefit of the certified cable company shall have no right, title, or interest in the moneys so collected. The commission shall approve a fee, to be collected by the electric utility company or companies concurrently with the cable surcharge, for acting as the collection agent for the certified cable company.

(c) Notwithstanding any requirements to the contrary, a high-voltage electric transmission cable system may be deemed “used or useful for public utility purposes” upon commencing commercial operations, subject to the commission’s determination and approval.

§269-E Recovery of electric utility company costs. (a) An electric utility company may recover, through an automatic rate adjustment clause, its revenue requirement resulting from the capital costs that it prudently incurs for on-island transmission infrastructure; provided that the commission has approved the utility’s commitment of capital expenditure costs for the project.

(b) To provide for timely recovery of the revenue requirement, the commission shall establish a separate automatic rate adjustment clause for that purpose, or modify an existing automatic rate adjustment clause. The use of the automatic rate adjustment clause to recover the revenue requirement shall be allowed to continue until the revenue requirement is incorporated in rates in an electric utility company’s rate case.

(c) The electric utility company’s revenue requirement shall include:

- (1) The commission-approved rate of return, as set in the electric utility company’s last rate case, on the utility’s net investment in the high-voltage electric transmission cable system from the acquisition date of the high-voltage electric transmission cable system, and in the on-island transmission infrastructure from the date the on-island transmission infrastructure is completed and available for service;
- (2) Depreciation; and
- (3) Revenue taxes and other relevant costs as approved by the commission.

(d) The electric utility company’s net investment includes costs incurred by the electric utility for planning, permitting, and constructing the on-island transmission infrastructure, including an allowance for funds used during construction where the utility finances the planning, permitting, and construction costs, less offsets such as accumulated depreciation and associated unamortized deferred income taxes.

(e) The on-island transmission infrastructure shall be available for service before the commercial operations date of the high-voltage electric transmission cable system. Notwithstanding any other provision in this chapter to the contrary, at the time the commission approves the electric utility company’s commitment of capital expenditure costs for the project, the commission may either:

- (1) Allow the electric utility company to recover its approved revenue requirement resulting from the capital costs that it prudently incurs for on-island infrastructure at the time that the infrastructure is available for service; or
- (2) Allow the company to continue to accrue an allowance for funds used during construction on such prudently incurred capital costs until the commercial operations date for the high-voltage electric transmission system.

(f) If the electric utility company elects not to complete the on-island transmission infrastructure, and the commission approves this election, or the

electric utility company is precluded from completing construction of the on-island transmission infrastructure, the electric utility company shall be allowed to recover reasonable costs determined by the commission to have been prudently incurred by the electric utility company with respect to the on-island transmission infrastructure. The electric utility company shall be allowed by the commission to recover the reasonable costs through the cable surcharge over a period equal to the period during which the costs were incurred or five years, whichever is greater.”

SECTION 3. Chapter 239, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§239- Cable surcharge amounts exempt. Amounts received in the form of a cable surcharge by an electric utility company acting on behalf of a certified cable company under section 269-D shall not be deemed gross income of that electric utility company for purposes of this chapter; provided that any amounts retained by that electric utility company for collection or other costs shall not be included in this exemption.”

SECTION 4. Chapter 240, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§240- Cable surcharge amounts exempt. Amounts received in the form of a cable surcharge by an electric utility company acting on behalf of an affected certified cable company under section 269-D shall not be deemed gross receipts for that electric utility company for purposes of this chapter; provided that any amounts retained by that electric utility company for collection or other costs shall not be included in this exemption.”

SECTION 5. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be excluded from gross income, adjusted gross income, and taxable income:

- (1) Income not subject to taxation by the State under the Constitution and laws of the United States;
- (2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;
- (3) Any compensation received in the form of a pension for past services;
- (4) Compensation paid to a patient affected with Hansen’s disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen’s disease;
- (5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;
- (6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it be-

ing the intent of this chapter not to repeal or supersede any express exemption or exclusion;

- (7) Income received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty, equivalent to pay received for forty-eight drills (equivalent of twelve weekends) and fifteen days of annual duty, at an:
 - (A) E-1 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2004;
 - (B) E-2 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2005;
 - (C) E-3 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2006;
 - (D) E-4 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2007; and
 - (E) E-5 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2008;
- (8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and between the United States and a foreign country; provided that the tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft that are documented or registered under the laws of the United States;
- (9) The value of legal services provided by a prepaid legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
- (10) Amounts paid, directly or indirectly, by a prepaid legal service plan to a taxpayer as payment or reimbursement for the provision of legal services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
- (11) Contributions by an employer to a prepaid legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs of legal services incurred by the employer's employees, their spouses, and their dependents;
- (12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269-16.3 [~~shall not be gross income, adjusted gross income, or taxable income for the acting utility under this chapter. Any~~]; provided that amounts retained by the acting utility for collection or other costs shall not be included in this exemption; [and]
- (13) Amounts received in the form of a cable surcharge by an electric utility company acting on behalf of a certified cable company under section 269-D; provided that any amounts retained by that electric utility company for collection or other costs shall not be included in this exemption; and
- [(13)] (14) One hundred per cent of the gain realized by a fee simple owner from the sale of a leased fee interest in units within a condominium

project, cooperative project, or planned unit development to the association of owners under chapter 514A or 514B, or the residential cooperative corporation of the leasehold units.

For purposes of this paragraph:

“Fee simple owner” shall have the same meaning as provided under section 516-1; provided that it shall include legal and equitable owners;

“Legal and equitable owner”, and “leased fee interest” shall have the same meanings as provided under section 516-1; and

“Condominium project” and “cooperative project” shall have the same meanings as provided under section 514C-1.”

SECTION 6. Section 269-30, Hawaii Revised Statutes, is amended to read as follows:

“§269-30 Finances; public utility fee. (a) Sections 607-5 to 607-9 shall apply to the public utilities commission and each commissioner, as well as to the supreme and circuit courts, and all costs and fees paid or collected pursuant to this section shall be deposited with the director of finance to the credit of the public utilities commission special fund established under section 269-33.

(b) There also shall be paid to the public utilities commission in each of the months of July and December of each year, by each public utility subject to investigation by the public utilities commission, a fee equal to one-fourth of one per cent of the gross income from the public utility’s business during the preceding year, or the sum of \$30, whichever is greater. This fee shall be deposited with the director of finance to the credit of the public utilities commission special fund.

(c) Each public utility paying a fee under subsection (b) may impose a surcharge to recover the amount paid above one-eighth of one per cent of gross income. The surcharge imposed shall not be subject to the notice, hearing, and approval requirements of this chapter; provided that the surcharge may be imposed by the utility only after thirty days’ notice to the public utilities commission. Unless ordered by the public utilities commission, the surcharge shall be imposed only until the conclusion of the public utility’s next rate case; provided that the surcharge shall be subject to refund with interest at the public utility’s authorized rate of return on rate base if the utility collects more money from the surcharge than actually paid due to the increase in the fee to one-fourth of one per cent.

(d) Notwithstanding any provision of this chapter to the contrary, the public utilities commission may, upon the filing of a petition by a public utility, credit a public utility for amounts paid under subsection (b) toward amounts the public utility owes in one call center fees under section 269E-6(f).

(e) Amounts received in the form of a cable surcharge by an electric utility company acting on behalf of a certified cable company under section 269-D shall not be deemed gross income for that electric utility company for purposes of this section; provided that any amounts retained by that electric utility company for collection or other costs shall not be included in this exemption.”

SECTION 7. In codifying the new sections added to chapter 269, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating and referring to the new sections in this Act.

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SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect on July 1, 2012; provided that the amendments made to section 235-7, Hawaii Revised Statutes, in section 5 of this Act shall not be repealed when that section is reenacted on January 1, 2013, pursuant to Act 166, Session Laws of Hawaii 2007.

(Approved June 27, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.