



Hawaii Solar Energy Association

Serving Hawaii Since 1977

Feb. 10, 2009
Room 325
9:00 A.M

House
Committee on Energy and Environmental Protection
HB1270

Mark Duda
President

Testimony Support

Chair Morita, Vice Chair Coffman, and Members of the Committees:

HSEA supports HB1270. As an intervener in the PUC's Feed-in Tariff docket (2008-0273), HSEA is aware that potential tariff regimes yielding financially viable projects would, in all likelihood, require the PUC to have significant latitude in pricing. Although the PUC investigation is still ongoing, research has shown that one of the key elements in a successful feed-in tariff program is to have sufficient pricing flexibility to encourage renewables to enter the market. The amendments proposed in this bill will allow the PUC this flexibility and, as such, are an important element of the legislative and regulatory infrastructure necessary for renewable energy in Hawaii.

Thank you for the opportunity to submit this testimony.

About the Hawaii Solar Energy Association

Hawaii Solar Energy Association (HSEA) was founded in 1977 and is comprised of more than 30 installers, distributors, manufacturers and financiers of solar energy systems, both hot water and PV, most of which are Hawaii based, owned and operated. The organization's primary goals are: (1) to further solar energy and related arts, sciences and technologies with concern for the ecologic, social and economic fabric of the area; (2) to encourage the widespread utilization of solar equipment as a means of lowering the cost of energy to the American public, to help stabilize our economy, to develop independence from fossil fuel and thereby reduce carbon emissions that contribute to climate change; (3) to establish, foster and advance the usefulness of the members, and their various products and services related to the economic applications of the conversion of solar energy for various useful purposes; and (4) to cooperate in, and contribute toward, the enhancement of widespread understanding of the various applications of solar energy conversion in order to increase their usefulness to society.

**DOWLING
COMPANY, INC**

Bill No. 1270

Support Y N

Date 2-10-09

Time 9:15

Cat AF AS AX B C

Type 1 2 WI

Room # 325 9:00 AM February 10, 2009

**HOUSE COMMITTEE ON ENERGY AND ENVIRONMENTAL PROTECTION
HB1270 RELATING TO ENERGY EFFICIENCY**

Chair Morita, Vice-Chair Coffman and Committee Members:

My name is Jennifer Stites and I am the Green Development Manager for Dowling Company, Inc. ("DCI"). DCI is a Maui-based real estate development company that is committed to sustainable development. To guide this effort and determine our performance metrics, we have adopted the nationally recognized U.S. Green Building Council's ("USGBC") Leadership in Energy and Environmental Design ("LEED") rating system. We are especially proud and excited that DCI's first USGBC LEED certified project is our own office located in Wailuku, Maui. Our office was also the first USGBC LEED certified office on Maui.

DCI supports HB1270 because in late 2008 the Hawaii Public Utilities Commission initiated a Docket into the investigation of Feed-in Tariffs in Hawaii. Although the PUC investigation is still ongoing, research has shown that one of the key elements in a successful feed-in tariff program is to have flexibility in regards to pricing to encourage renewables to enter the market. The amendments proposed in this bill will allow the PUC the flexibility in determining a just and reasonable rate for nonfossil fuel generated electricity which in turn will hopefully lead to more nonfossil fuel generated electricity in the Hawaii market.

Thank you for the opportunity to submit testimony.

TESTIMONY OF CARLITO P. CALIBOSO
CHAIRMAN, PUBLIC UTILITIES COMMISSION
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
FEBRUARY 10, 2009

Bill No. HB 1270

Support Y N

Date 2.10.09

Time _____

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Type 1 2 WI

MEASURE: H.B. No. 1270
TITLE: Relating to Renewable Energy

Chair Morita and Members of the Committee:

DESCRIPTION:

This bill amends Section 269-27.2, Hawaii Revised Statutes ("HRS"), by removing the avoided cost limit on the rate for purchase of electricity by a public utility when the utility purchases electrical energy. In addition the bill amends the definition of "cost effective" in Section 269-91, HRS.

POSITION:

The Commission has no objections to the proposed amendments.

COMMENTS:

The Commission defers to the Legislature's judgment as to whether the avoided cost limit on the rate that an electric utility must pay for nonfossil fuel generated electricity should be eliminated.

Should the Legislature decide to eliminate the avoided cost limit, the Commission recommends the definition of "cost effective" as contained in HRS Section 269-91 be amended as follows to remain consistent with the methodology set by the Commission:

"Cost-effective" means the ability to produce or purchase electric energy or firm capacity, or both, from renewable energy resources at or below avoided costs or as the commission otherwise determines to be just and reasonable **just and reasonable** consistent with the methodology set by the public utilities commission in accordance with section 269-27.2."

Thank you for the opportunity to testify.

pApril 17, 2003

Representative Raymond Pineau
2 State House Station
Augusta, Maine 04333

Re: LD 1137 and LD 1485

Dear Mr. Pineau:

I am writing on behalf of Western Maine Citizens for Clean Air & Water ("WMCCAW") concerning two bills currently pending before the Maine legislature, LD 1137 and LD 1485. These bills would amend Maine state law concerning water quality standards for dissolved oxygen and phosphorus for certain Maine waters, including the Androscoggin River. WMCCAW is opposed to these bills and urges you to reconsider your sponsorship or support of these bills.

As Maine Department of Environmental Protection (DEP) is well aware, an impoundment of the Androscoggin River, Gulf Island Pond, is not attaining Maine's applicable water quality standard for dissolved oxygen (DO) and is further experiencing nuisance seasonal algae blooms in violation of Maine water quality standards established pursuant to the federal Clean Water Act. The pollutants that are causing DO depression and the nuisance algae blooms in Gulf Island Pond include biochemical oxygen demand (BOD), total suspended solids (TSS), and phosphorus.

There are many sources of BOD, TSS, and phosphorus in the Androscoggin River. The most significant source of all three pollutants are the three pulp mills located on the Androscoggin River: the Nexfor Fraser Paper, Inc. mill in Berlin, New Hampshire; the MeadWestvaco Corp. mill in Rumford, Maine; and the International Paper Co. mill in Jay, Maine. According to a DEP report, the mills account for 98% of the BOD and 99% of the TSS from point sources, and 77% of the phosphorus loading to the Androscoggin River. February 2003 Draft Androscoggin River Alternative Analysis for TMDL ("TMDL Alternatives Analysis") at 4-5, 6.

Under the federal CWA, the proper response to this situation would be for Maine DEP to revise the NPDES permits issued to these facilities to require reductions in BOD, TSS, and phosphorus discharges to the Androscoggin River and thus promote water quality standard attainment.

The alternative approach that LD 1137 and LD 1485 attempt to embrace is to relax water quality standards primarily for the private gain and benefit of the pulp mills that are polluting the Androscoggin River and preventing water quality standards from being attained. Specifically, LD 1137 would relax phosphorus standards to allow increased phosphorus loading to the River and would further define thermal stratification as a natural condition and mandate that waters failing to attain otherwise applicable water quality standards as a result of thermal stratification "may not be considered" to not be

meeting water quality standards. LD 1485 would exempt impounded waters below thermal stratification points from meeting dissolved oxygen water quality standards. WMCCAW views this as an inappropriate response to a public resource impairment problem and urges you to drop your sponsorship or support of this legislation.

WMCCAW further points out even if these bills pass into law, Maine water quality standards will not be lawfully revised for purposes of the federal Clean Water Act unless Maine also obtains U.S. Environmental Protection Agency (EPA) approval for this revision pursuant to CWA section 303(c), 33 U.S.C. § 1313(c) and 40 C.F.R. part 131, subpart C. *See, e.g., Alaska Clean Water Alliance v. Clark*, No. C96-1762R, 1997 U.S. District LEXIS 11144 (W.D. Wash. July 8, 1997) (new or revised state water quality standards become effective only after EPA has completed its review process and approved the standards under the CWA); 40 C.F.R. § 131.20(c).

The bills are not in accord with the requirements of federal law concerning amendment of water quality standards in various ways, and thus it would be improper for EPA to approve the amendment of water quality standards the bills purport to accomplish. The legislative process does not meet the procedural requirements set forth in EPA regulations for amending water quality standards. These regulations mandate a quasi-adjudicative process that includes formal notice to the public and an opportunity for comment before a state amends its water quality standards. 40 C.F.R. § 131.10(e). These regulations further mandate the development of a specific factual record to support certain mandatory findings before water quality standards can be relaxed in the fashion that the bills propose. *See, e.g.,* 40 C.F.R. § 131.10(g), (h). The Maine legislature does not provide public notice and formal opportunity to comment before enacting legislation and does not produce a factual record to support specific findings, as is the case in an adjudication or agency rulemaking. Notably, the bills in issue effectively de-designate the existing beneficial uses of areas below thermal stratification in certain impoundments, including Gulf Island Pond, which include fish habitat (and the dissolved oxygen level necessary to support such habitat). EPA may not approve such a de-designation of beneficial use without a factual record to support a finding that such beneficial use can not be attained by implementing effluent limits required by CWA sections 301(b) and 306 and by implementing cost-effective and reasonable best management practices for nonpoint source control. *See* 40 C.F.R. § 131.10(h)(2). EPA may further not approve this de-designation of a beneficial use without a use attainability analysis as provided for in 40 C.F.R. sections 131.10(j), 131.3(g), and 131.10(g). Such an analysis would, *inter alia*, have to support a finding that controls more stringent than those required by CWA sections 301(b) and 306 "would result in substantial and widespread economic and social impact." Again, the legislative process is an improper vehicle for creation of a factual record that would support the necessary findings.

To the extent that the Maine legislature does intend to attempt some compliance with the public notice requirements of 40 C.F.R. section 131.20(b) in conjunction with amending Maine water quality standards, we further request that we be put on any mailing lists the legislature develops or otherwise receive a copy of any issued

notices. Email notification will suffice, but if this is not feasible, please mail appropriate documents to me at the following address:

Jenny Orr
Western Maine Citizens for Clean Air and Water
P.O. Box 478
West Paris, Maine 04289
Email: jvbo@exploremaine.com

And please send copies to our counsel at:

Christopher A. Sproul
Environmental Advocates
Building 1004B O'Reilly Avenue
San Francisco, California 94129
Email: sproul@sbcglobal.net

Sincerely,

Jenny Orr

cc: Robert Varney, EPA Region 1 Regional Administrator
Ann Williams, EPA Region 1
Steve Silva, EPA Region 1