

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

H.B. No. 2567

Relating to the Public Utilities Commission

Tuesday, February 9, 2016

8:00 am

State Capitol, Conference Room 325

Kevin M. Katsura

Assistant Deputy General Counsel (Regulatory), Legal Department
Hawaiian Electric Company, Inc.

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

My name is Kevin Katsura and I am testifying on behalf of Hawaiian Electric Company and its subsidiary utilities Maui Electric Company and Hawai'i Electric Light Company in **opposition** to H.B. 2567.

This bill is unnecessary and may create unintended consequences adverse to the public interest.

The Public Utilities Commission's statutory authority and discretion are both full and clear. Statutory authority rests in Hawaii Revised Statutes ("HRS") chapter 269, in particular §§269-6, 269-7, 269-17, and 269-19. The Commission's standard of review is that "(1) the acquiring utility is fit, willing, and able to perform the service currently offered by the utility to be acquired, and (2) the acquisition is reasonable and in the public interest."¹ How the Commission applies this standard is part of its discretion to establish reasonable criteria for consideration in specific mergers. In Order No. 32695 the Commission carefully identified the issues it would consider in the proposed merger of the Hawaiian Electric Companies and NextEra Energy which included, among other things, whether the merger would provide "significant, quantifiable benefits to the HECO Companies ratepayers" and broadly defining the

¹ See Order No. 3269 at 15-16 citing Order No. 91658.

public interest to include impacts on the State's economy, communities served by the HECO Companies and the provision of safe, adequate and reliable service at reasonable costs.² Adding a "substantial net benefits" standard to the Commission's already clear statutory authority and discretion is simply unnecessary.

The "public interest" standard, which has been adopted by the Commission, is the most common standard used for consideration of a merger. This has been applied by other commissions as either the creation of "benefits" by comparing the subject transaction to the status quo absent the transaction, or a determination of the absence of harm.

If enacted by the Legislature, H.B. 2567 may unduly limit the Commission in how it considers future merger proposals, potentially denying utility customers and the public valuable benefits. The magnitude of the benefits created by a change in control is specific to the companies involved and the status of the industry, economy and community at the current time. One danger of a "substantial net benefits" standard is that it restricts the Commission from considering all attributes of a proposed change of control. Hawaii is at the forefront of transforming the energy industry. The Commission itself has declined to adopt a "substantial net benefits" standard in prior merger approvals. Had the Commission adopted a "substantial net benefits" standard it would have not only limited its discretion, but also established a target of what is "substantial", which, in the case of the most recent approval of the sale of The Gas Company to Macquarie Gas Holding, was aggregate rate credits to customers of \$4.1 million.³ The Commission should not be forestalled from continuing to exercise its appropriate discretion to consider whether a given merger is, on balance, in the public interest given considerations appropriate at that time.

² See Order No. 32695 at 19.

³ See Order No. 2249 in Docket 05-0242 at 15, 23.

Further, the "reasonable and in the public interest" finding is broad to give the PUC discretion to apply specific standards to different transactions based on the facts and circumstances. For example, in the case of a financially weak utility, a potential buyer may not be willing to purchase a distressed utility if the buyer must invest to improve the financial viability of the franchised utility as well as provide additional benefits to meet the substantial net benefit standard. It is also unclear what "substantial net benefits" means.

Accordingly, the Hawaiian Electric Companies oppose H.B. 2567.

Thank you for this opportunity to testify.



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TO THE HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

TUESDAY, FEBRUARY 9, 2016
8:00 A.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, TO THE HONORABLE CHRIS LEE, CHAIR,
AND MEMBERS OF THE COMMITTEE

HOUSE BILL NO. HB 2567 - RELATING TO THE PUBLIC UTILITIES COMMISSION

DESCRIPTION:

This measure proposes to establish "substantial net benefit" as the Public Utilities Commission's ("PUC") standard for a transfer or assignment of a public utility franchise.

POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") supports this bill.

COMMENTS:

The Consumer Advocate has consistently argued that "substantial net benefit" should be the standard of review in utility mergers. The Consumer Advocate also notes favorably that the proposed statutory language would give the PUC the latitude to establish reasonable criteria pursuant to this standard for specific mergers, thus keeping in mind the specific context of each proposed merger that may come before it in the future.

Thank you for this opportunity to testify.



HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

February 8, 2016
(Testimony is 1 page long)

TESTIMONY IN SUPPORT OF HB 2567

Chair Lee and Members of the Committee:

The Alliance for Solar Choice (TASC) appreciates the opportunity to support HB 2567, relating to the Public Utilities Commission. TASC respectfully supports this measure.

TASC advocates for maintaining successful distributed solar energy policies and markets throughout the United States. Collectively, TASC members serve a significant portion of solar customers in Hawaii.

This bill does not significantly change existing Public Utilities Commission (“Commission”) precedent, but rather it clarifies an ongoing controversy. The underlying issue is a question of policy. To that extent, it is appropriate for this body to provide guidance to the Commission.

Moreover, the “substantial net benefit” standard is appropriate. Only in that occurrence can one truly say that the sale or transfer of a utility is in the public interest.

Thank you for considering our comments.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 08, 2016 3:52 PM
To: EEPtestimony
Cc: dylanarm@hawaii.edu
Subject: *Submitted testimony for HB2567 on Feb 9, 2016 08

LATE

HB2567

Submitted on: 2/8/2016

Testimony for EEP on Feb 9, 2016 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan Armstrong	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 09, 2016 10:59 PM
To: EEPtestimony
Cc: ed.j.wagner@gmail.com
Subject: Submitted testimony for HB2567 on Feb 9, 2016 08:



HB2567

Submitted on: 2/9/2016

Testimony for EEP on Feb 9, 2016 08:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Ed Wagner	Individual	Support	No

Comments: If you don't know what I expect of you as true public servants by now, you never will know. What I have said to the PUC applies to the Legislature and Governor. The decision to be made by the PUC isn't about us but about the future. Its decision will influence the direction the nation and the world take on energy. If its chooses more for-profit monopoly power, the world will lose all hope of ever achieving social and economic justice and energy justice for its citizens. If it supports non-profit power, the world will be emboldened to end monopolies as the righteous legacy to leave to the next century's inhabitants. HECO's stock will plummet to its true value of \$15 a share, enabling the Counties to condemn its assets at fire sale, foreclosure sale, fixer-upper prices, convert to non-profit Co-ops, and increase the security of our nation and our state and improve our civil defense, support the DoD / Navy, and leave the future more financially secure that we are today under HECO's dominion. The death spiral of utility monopolies will continue at a faster pace. Democratized, decentralized, non-profit energy will become the norm throughout the world. History will praise Hawaii for finally having the courage to embrace its constantly violated motto, ua mau ke ea o ka aina i ka pono. Let's not loose sight of the fact that HECO actively participated in the overthrow of the Monarchy on Jan 17, 1893, falsified history to create its new logo, acted in an (allegedly) malicious, fraudulent, criminal manner in the geothermal RFP, actively 'bribes' non-profits and other businesses to silence dissent in the community (hush money) and to gain support for its bailout by Next Terror / Florida Plunder & Lute, and is in violation of its franchise.

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Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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