



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

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

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

KA 'OIHANA PILI KĀLEPA
335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
cca.hawaii.gov

Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
And
Senate Committee on Public Safety and Intergovernmental and Military Affairs
Friday, March 22, 2024
9:36 a.m.
Conference Room 229

On the following measure:
S.C.R. 182/ S.R. 156, URGING THE PUBLIC UTILITIES COMMISSION TO HONOR AND COMPLY WITH ITS STATUTORY DUTY TO INVESTIGATE THE CAUSES OF THE AUGUST 2023 MAUI WILDFIRES AS REQUIRED BY SECTION 269-9, HAWAII REVISED STATUTES

Chair Keohokalole, Chair Wakai, and Members of the Committees:

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 provides comments on this resolution.

The purpose of this resolution is to urge the Public Utilities Commission (Commission) to honor and comply with its statutory duty to investigate the causes of the August 2023 Maui Wildfire as required by Hawaii Revised Statutes (HRS) § 269-9, and submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than 20-days prior to the convening of the Regular Session of 2025. In addition, this resolution urges the Commission to: (1) regulate each electric utility more proactively in the public interest and use its investigatory powers to examine

the condition of each electric utility pursuant to HRS § 269-7, to ensure that essential utility services are delivered to consumers in a safe, reliable, economical, and environmentally sound manner; (2) require each electric utility to prepare, submit, and implement a robust and effective wildfire mitigation plan; (3) implement reliability standards and interconnection for each electric utility pursuant to HRS Chapter 269, Part IX; (4) proactively direct each electric utility to implement frequently reviewed, systematic, and recurring renewable energy procurement plans, which shall include plans for distributed energy resource renewable generation, utility-scale resource renewable generation, and community-based renewable energy projects, to replace fossil fuel power plant facilities and achieve the State's renewable portfolio standards established by HRS § 269-92; and (5) publicly share information relating to the briefing with the electric utility that occurred on March 4, 2024, including any resulting findings, recommendations, and directives of the Commission.

The tragedy and devastation of the wildfires that arose on Maui during the August 8, 2023, windstorm must be prevented from recurring. The Department views the on-going investigatory efforts into the causes of the wildfires and subsequently undertaking the necessary mitigative efforts to drastically reduce wildfire risk from utility infrastructure as critical to mitigating the risk from future catastrophic wildfires. To those ends, the Department strongly supports investigation into the causes of the wildfires that occurred on Maui and notes that the Department of Attorney General announced the release of the Phase One report on the independent investigation into the Maui wildfires will occur on April 17, 2024.¹ The Phase One report, includes the analysis of the Fire Safety Research Institute (FSRI) and “analyzes how the fire incident unfolded, based on science, during the first 24 to 72 hours of the fire and its aftermath, and includes a comprehensive timeline of events.”

The Department also expresses its strong support for the electric utilities developing and implementing robust and effective wildfire mitigation plans. On September 18, 2023, in Docket No. 2022-0135, the Department recommended that the Commission open a new docket under HRS § 269-7 to assess the vulnerabilities of the

¹ See <https://ag.hawaii.gov/wp-content/uploads/2024/03/News-Release-2024-12.pdf>.

systems of Hawaii's regulated utilities to threats and disasters, whether they be manmade or caused by extreme natural events. The proposed proceeding would allow for identification and a thorough assessment of critical vulnerabilities to the State's regulated utility systems, and risk mitigations to be proposed, evaluated, and prioritized. The targeted outcome of such an effort would be to support the development of plans that rely on risk assessments prioritizing mitigation measures that should be implemented to address critical vulnerabilities efficiently and cost-effectiveness. Since that time, the Commission issued Order No. 40396 requiring that all public utilities file hazard mitigation plans in non-docketed Case No. 2023-04661, which are now required to be filed by August 21, 2024.

The Department also strongly supports utility services being delivered to consumers in a safe, reliable, economical, and environmentally sound manner. The Department offers that the existing Performance Incentive Mechanisms for service reliability indices developed in Docket No. 2018-0088 provide an incentive for electric utilities on Oahu, Maui County, and Hawaii Island to maintain reliable service for their respective ratepayers. The Department notes that the Hawaiian Electric Companies' Resource Adequacy Workplan, Final Recommendation and Next Steps, was filed with the Commission on November 16, 2023, in response to the Commission instructing them to explore an alternative resource adequacy criteria for use in the future rounds of the integrated grid planning process. Additionally, the Division notes that the Commission has ordered the Hawaiian Electric Companies to plan for three-year cycles of procurement for utility-scale renewable energy projects as part of an Integrated Grid Planning process² and the Kauai Island Utility Cooperative has set an aggressive goal of achieving and maintaining 100% renewable generation by 2033, 12 years ahead of the State's renewable portfolio standards mandate.³

² See Order No. 40651 in Docket No. 2018-0165, issued on March 7, 2024.

³ See Objective 2.1 of Strategic Plan Update 2023-2033 (Adopted January 2023), https://kiuc.coop/sites/default/files/KIUC%20Strategic%20Plan%202023_2033%20FINAL.pdf.

The Department strongly supports the sharing of information relating to the briefing with the electric utility that occurred on March 4, 2024, including any resulting findings, recommendations, and directives of the Commission.

Thank you for the opportunity to testify on this resolution.

TESTIMONY OF
COLIN A. YOST
COMMISSIONER, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

TO THE
SENATE COMMITTEES ON
COMMERCE AND CONSUMER PROTECTION
and
PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS

Friday, March 22, 2024
9:36 a.m.

Chairs Keohokalole and Wakai, Vice Chairs Fukunaga and Elefante, and Members of the Committees:

MEASURE: S.C.R. 182 / S.R. 156

TITLE: URGING THE PUBLIC UTILITIES COMMISSION TO HONOR AND COMPLY WITH ITS STATUTORY DUTY TO INVESTIGATE THE CAUSES OF THE AUGUST 2023 MAUI WILDFIRES AS REQUIRED BY SECTION 269-9, HAWAII REVISED STATUTES.

POSITION:

The Public Utilities Commission (“Commission”) offers the following comments for consideration.

COMMENTS:

The Commission appreciates the intent of these resolutions to ensure that the Commission is fulfilling its statutory duties and investigating accidents involving regulated public utilities, as well as addressing other regulatory issues such as electric reliability and resource procurement. The Commission’s fundamental role is to ensure that Hawaii residents have access to essential utility services, and the Commission and its staff work diligently every day to ensure that such services are delivered safely and in the most economic and environmentally sound manner possible. The devastating events on August 8th, 2023 reconfirm and renew the Commission’s focus on its most core functions in service of the public interest.

The past four years have presented Hawaii, its residents, its utilities, and the Commission with an unprecedented confluence of challenges. Despite a global pandemic, ongoing supply chain disruptions, high inflation, global energy price increases, and the tragic devastation of the Maui wildfires, the Commission delivered major policy actions that address the root cause of the problems presented in the Senate's resolutions. For example, the Commission oversaw three rounds of solicitations for grid-scale renewable energy resulting in over 1,800 GWh of renewable energy procured across the Hawaiian Electric territories, mandated implementation of a virtual power plant that will grow to over 55 MWs of committed peak distributed capacity on Oahu and Maui, initiated a proceeding to investigate energy equity and affordability, and has used its regulatory authority to direct the Hawaiian Electric Companies' efforts towards these major State objectives via financial incentives. The Commission recognizes that there is much more work to be done but provides the information below as support for the Commission's position that it has faithfully exercised its statutory authority in the public interest.

As stated above, the Commission agrees with the intent of these resolutions and takes this opportunity to share with the Committee its efforts and plans aligned with the tasks within these resolutions.

Statutory duty to investigate the causes of the August 2023 Maui wildfires:

The Commission is affirmatively fulfilling its statutory mandate under HRS Section 269-9 and other applicable statutory authorities. Actions the Commission has taken include, but are not limited to:

- Issuing information requests to the Hawaiian Electric Companies related to the Lahaina Morning (August 2023) and Waianae Fires (November 2023) to investigate the grid engineering and operational aspects, as well as Hawaiian Electric's response, to build guidance for future utility wildfire mitigation plan filings;
- Assigning two senior staff members to support to the joint Federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") and Maui Fire Department investigation into causation of the August Maui wildfires;
- Timely responding to inquiries from the Hawaii Attorney General's ("AG") Office related to the AG's Office investigation into the Wildfires;
- Serving on the State's Wildfire Risk Reduction Task Force, focused on statewide emergency response, communications, and risk-informed decision making and the Office of Homeland Security Critical Infrastructure Working

- Group, focused on mitigating vulnerabilities and threat exposure of critical infrastructure;
- Communicating extensively with the California Earthquake Authority (administrator of the California Wildfire Fund), California Public Utilities Commission, and California Office of Infrastructure Safety, which have provided a number of resources and information about wildfire response in California that could be applicable to or adapted for Hawaii;
 - Creating a Maui Wildfires Information, Updates & Resources webpage to share important non-docketed orders/reports and other information with the public and media;
 - Directing all identified public utilities in the State (includes electric, gas, water/wastewater, water carriers, and telecom utilities) to draft Natural Hazard Mitigation Reports to address natural hazards and detail the costs to the utility of hazard mitigation efforts both near and long-term, including wildfires;
 - Ordering a continuation of disconnection suspensions on Maui for the protection of Maui utility customers during the pendency of the Governor's emergency proclamations related to the wildfires;
 - This includes an ongoing requirement that all Maui utilities (including Maui Electric) provide 60-days advanced notice to the Commission related to transfer of property or stocks, or any mergers, change of control, or other major financial change;
 - Requesting status updates in all pending Hawaiian Electric dockets to better track the Hawaiian Electric Companies' prioritization of dockets and financial situation post-wildfires;
 - Issuing Decision & Order No. 40566 in Docket No. 2022-0135 in January 2024 on the Hawaiian Electric Companies' proposed Climate Adaptation Transmission and Distribution Resilience Program (which includes \$95M in matching funds from U.S. Department of Energy) to improve resiliency of its electric grid given Hawaii's increasing vulnerability to severe weather events;
 - Analyzing the Hawaiian Electric Companies' application to create a credit facility utilizing its accounts receivable in Docket No. 2024-0040
 - Reviewing utility accident reporting requirements and procedures to ensure that they are timely, effective, and modernized; and
 - Requiring electric utilities to provide updates on their red-flag warning procedures and protocols.

The Commission is continuing to assess responses to its inquiries and will continue to take action, as appropriate.

Report to the 2025 Legislature on its findings:

The Commission will be happy to provide such a report to the 2025 Legislature.

Investigate the condition of each regulated utility:

The Commission proactively employed its investigative powers and opened Case No. 2023-04661 on November 21, 2023.¹ Order No. 40396 directed all public utilities to file a natural hazard mitigation report with the Commission detailing ongoing efforts and future mitigation plans to address natural hazards in relation to their provision of utility services, operations, and expenditures. These reports will be filed in August of this year, at which time the Commission will review and assess the plans. The Commission expects that future expenditures and operational decisions by all utilities will align with these plans in furtherance of public safety and resilience to many different natural hazards.

Regarding electric utility services, the Commission established a Performance-Based Regulation (“PBR”) framework that governs the Hawaiian Electric Companies and directly ties their profits to the objectives outlined in these resolutions. The PBR framework includes financial penalties for poor electric service reliability, incentives to control costs across all business functions, and rewards for aggressively integrating renewable energy onto the system, among other State priorities. The Commission recently initiated a holistic review of the PBR framework to ensure that it is functioning as intended, that it is effectively driving utility performance, and to identify any necessary updates to address priorities such as wildfire mitigation.

Require each electric utility to implement a wildfire mitigation plan:

As part of its regulatory oversight, the Commission has investigated the actions of Hawaiian Electric to address fire risks across its territories. The Commission oversees all electric utilities’ spending and programs regarding vegetation

¹ See: <https://hpuc.my.site.com/cdms/s/puc-case/a2G8z000000G7xREAS/pc183087?tabset-a3299=3>.

management, asset management, resilience, and risk management, and has also issued multiple inquiries into past fires.²

Moving forward, the Commission will require electric utilities to file comprehensive wildfire mitigation plans. The Commission has supported legislation on wildfire mitigation planning and funding throughout this session. The Commission is also aware that Hawaiian Electric is updating its wildfire mitigation plan, that the Kauai Island Utility Cooperative is in the process of finalizing its plan, and that all utilities are developing natural hazard mitigation plans as ordered by the Commission to ensure preparedness for disasters beyond wildfires, as discussed above.

Implement electric reliability standards and interconnection requirements:

The Commission has addressed reliability and interconnection requirements in multiple venues over many years. For example, the Commission adopted reliability indices that are commonly used across the electric industry to measure system reliability. The Commission assesses the Hawaiian Electric Companies on their performance with regards to the System Average Interruption Duration Index (“SAIDI”) and the System Average Interruption Frequency Index (“SAIFI”), and assesses penalties if achievement is not up to established standards. The Commission has also required resource adequacy planning and assessments in the Integrated Grid Planning proceeding and has established a performance incentive to ensure generation unit reliability. With regards to interconnection, the Commission employs an independent engineer to oversee interconnection disputes, resolve technical issues, and provide insights into process improvements. The Commission has also adopted incentives to ensure timely and cost-effective interconnection processes.

Moving forward, the Commission is pursuing many of the recommendations outlined by the independent engineer to improve interconnection processes, as outlined in a recent decision addressing the Hawaiian Electric Companies’ Integrated Grid Plan and is supporting legislation to strengthen and expand existing law relating to the hiring of a Hawaii Electric Reliability Administrator

² For a more detailed list of activities, please see page 3 of the Commission’s response to the U.S. House of Representatives Subcommittee on Oversight and Investigations at: <https://docs.house.gov/meetings/IF/IF02/20230928/116431/HHRG-118-IF02-20230928-SD003.pdf>.

(“HERA”) to oversee electric system reliability and resilience to support the Commission’s work.³

Direct electric utilities to implement a recurring renewable energy procurement plan:

As stated above, the Commission has overseen three rounds of solicitations for utility-scale renewable energy procurements across the Hawaiian Electric Territories since 2018. Additionally, the Commission reviews capital and operational plans for the Kauai Island Utility Cooperative.

As part of the Commission’s recent approval of the Hawaiian Electric Companies’ Integrated Grid Plan (“IGP”), the Commission directed the utilities to update the Plan at regular intervals, with near-term action plan updates occurring annually. These documents will guide the next round of renewable energy procurements, known as the IGP Request for Proposals (“RFP”). The Hawaiian Electric Companies issued the draft IGP RFP for public comment earlier this month and will file a formal application with the Commission for approval to move forward with the procurement at the end of April. The IGP RFP seeks to meet grid needs through 2033 via regular solicitations, each occurring about 18 months apart. The Commission has already begun to recommend ways that this series of procurements can advance energy equity, and will oversee the processes, in conjunction with independent observers and engineers, to ensure that they are conducted fairly and in furtherance of State policies.

Share information on the March 4, 2024 briefing:

The briefing slides are available on the Commission’s Content and Document Management System.⁴

Thank you for the opportunity to testify on this measure.

³ For a more detailed report on the Commission’s work and recommendations to improve reliability and interconnection processes, see: <https://puc.hawaii.gov/wp-content/uploads/2024/01/2024-PUC-Report-Act-201-12.28.23-FINAL.pdf/>

⁴ See “Letter From: K. Katsura To: Commission Re: Docket No. 2021-0024 - Opening a Proceeding to Review Hawaiian Electric’s Interconnection Process and Transition Plans for Retirement of Fossil Fuel Power Plants; Generation and Reliability Update”, filed March 6, 2024: <https://hpuc.my.site.com/cdms/s/puc-case/a2G8z0000007f6IEAQ/pc20643?tabset-a3299=3>.



P.O. Box 37158, Honolulu, Hawai`i 96837-0158
Phone: 927-0709 henry.lifeoftheland@gmail.com

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair

Senator Carol Fukunaga, Vice Chair

COMMITTEE ON PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS

Senator Glenn Wakai, Chair

Senator Brandon J.C. Elefante, Vice Chair

DATE: Friday, March 22, 2024

TIME: 9:36 AM

PLACE: Conference Room 229

RE: SCR 182 / SR 156 Public Utilities Commission re HRS 269-9

SUPPORT

Aloha Chairs Keohokalole and Wakai, Vice Chairs Fukunaga and Elefante, and Members of the Committees

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 54 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

The Public Utilities Commission`s role and responsibilities have vastly increased over the years and decades. The complexity of electric grids has transformed from one-way delivery of electricity from fossil fuel burning centralized stations to a plethora of 2-way distributed systems and technologies. The Commissioners staff has grown as the number of issues has grown. The staff performs admirably.

There has always been tension between active and passive regulation.

The 1975 audit of the PUC noted, "*The general approach of the PUC and the PUD [a.k.a. Consumer Advocate] presently can probably be best characterized as being passive and reactive.*"¹

The 2004 audit of the PUC stated, "*The report found the commission and the division to be passive and reactive in defining and carrying out their separate roles. The commission emphasized adjudication and lacked adequate policymaking, enforcement, and administrative capabilities.*"²

Today, the tension is greatest in addressing how utilities should address extreme weather events.

The tension is not just at the PUC.

The City and County of Honolulu and the Honolulu Board of Water Supply are suing the fossil fuel majors.

Fourteen youth are suing the State Department of Transportation for promoting policies that will increase greenhouse gas emissions. The Governor wanted the Legislature to fund expensive continental lawyers to fight the youth.

The **Legislature** is advancing legislation that would allow the Commission to open fire related proceedings using a non-docketed process that would eliminate stakeholder involvement.

The Lahaina and Maui fires of 2023 proved devastating and eye-opening. There were warning signs that were ignored.

¹ Page 73, <https://files.hawaii.gov/auditor/Reports/1965-1979/75-3.pdf>

² <https://files.hawaii.gov/auditor/Reports/2004/04-02.pdf>

The Commission was required by HRS 269-9 to open an investigation last fall. The investigation should have examined how utility equipment causes sparks and fires, and what can be done to prevent accidents.

The requirement for investigating accidents was part of the law establishing the Commission in 1913. There were assertions that the law did not say when an investigation had to be opened. But all laws describe what must be done in real time unless there are specific time-related clauses in the law. Over the past 100 years, the Commission has timely investigated accidents.

Instead, in this case, the Commission adopted a reactive and piecemeal approach. The Commission asked fire-related questions in non-dockets where stakeholder involvement was not permitted, and in active dockets in which existing procedural orders largely blocked questions by stakeholders.

The Commission did not proactively require each electric utility to prepare, submit, and implement a robust and effective wildfire mitigation plan.

The Commission required public utilities to file a Utility Natural Hazard Mitigation Report by May 21, 2024 in a non-docket, but then authorized a three-month delay.

Calls for conservation and rolling blackouts have not helped install confidence in utility and Commission actions.

The Commission conducted a briefing with an electric utility regarding the recent island-wide grid outages, to which the public was denied access on March 4, 2024.

Life of the Land supports the resolution calling for the Commission to open a fire-related investigation and to address reliability issues related to recent calls for conservation and rolling blackouts.

Mahalo

Henry Curtis
Executive Director