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WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEES ON ENERGY AND INTERGOVERNMENTAL
AFFAIRS AND COMMERCE AND CONSUMER PROTECTION
ON
HOUSE BILL NO. 974, H.D. 1

March 20, 2025
9:30 a.m.
Room 229 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.



**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:

SENATE COMMITTEES ON ENERGY AND INTERGOVERNMENTAL AFFAIRS
AND ON COMMERCE AND CONSUMER PROTECTION

DATE: Thursday, March 20, 2025

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 229

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

Chairs Wakai and Keohokalole and Members of the Committees:

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 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 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.

5. ***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.
6. ***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.

If B&F fails to perform any required action or duty under this agreement in a timely manner, we propose that the sole remedy for any party will be specific performance. Additionally, we propose that B&F will not be held liable for monetary or compensatory damages resulting from a breach of the step-in agreement.

Attached is our proposed markup of the bill showing revisions we believe would resolve these problems. We would be happy to assist the Committee in preparing a House Draft 2.

We respectfully ask the Committee to consider our comments.

HOUSE OF REPRESENTATIVES
THIRTY-THIRD LEGISLATURE, 2025
STATE OF HAWAII

H.B. NO.

974
H.D. 1

A BILL FOR AN ACT

RELATING TO ENERGY.

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

.B. NO.

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

The procurement of replacement clean energy resources by a certain investor-owned electric utility and its electric utility subsidiaries is ongoing in its Stage 3 request for proposals and further anticipated in its first Integrated Grid Planning request for proposals. ___These requests for proposals set forth energy plans that have been developed through extensive engagement with local stakeholders and communities and reviewed and approved by the public utilities commission. ___The legislature finds that successful procurement of clean energy resources is in the public interest and necessary to avoid significant detrimental reliability and affordability impacts to electric utility customers.

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

The legislature also finds that continued development of clean energy resources requires adequate assurances that payments for purchased power will be made to independent power producers as and when due by the utility under power purchase agreements. ___The current sub-__investment__grade status of a certain investor-owned electric utility and its subsidiaries, arising from the tragic events that occurred in the 2023 Maui wildfires, has led independent power producers, and those who would otherwise finance renewable energy projects, to raise concerns about the reliability of payment by the utility and its subsidiaries under power purchase agreements procured through the Stage 3 and Integrated Grid Planning requests for proposals. ___Those concerns may cause independent power producers to cancel renewable energy projects or increase the prices they would charge for deliveries to address this perceived credit risk. ___Either outcome would be contrary to the interests of electric utility customers in the State.

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The legislature further finds that the public interest would be served if the department of budget and finance enters into "step-in agreements" with independent power producers, pursuant to which the department of budget and finance would agree to make payments to the independent power producers after a failure by an electric utility to make required payments pursuant to the terms of the power purchase agreements. ___The department of budget and finance's obligation to make payments pursuant to the terms of a step-in agreement is limited [solely] to the [revenues]moneys received from power purchase charges associated with a power purchase agreement subject to a step-in agreementand reserve fees that are on deposit in the power purchase costs trust fund established by the department of budget and finance. ___Neither the full faith and credit of the State, nor any other moneys of the State, will be pledged for any obligations under a step-in agreement.

The legislature finds that step-in agreements may provide assurances that payments for purchased power will be made to independent power producers as and when due by the utility under the covered power purchase agreements. ___The legislature also finds that the intent of this Act is further served by appointing, authorizing, and empowering the electric utility to serve as the billing, collection and[,] payment, [and management] agent of the department of budget and

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finance. __ Prior to a payment default by the electric utility, the electric utility will be authorized to utilize [such revenues] moneys received from independent power producers related to power purchase charges to discharge its obligations to pay independent power producers for electric energy and related products. __ The obligations of the department of budget and finance under this Act are undertaken for a public purpose, namely, the protection of public health, safety, and welfare by supporting the development of clean energy resources that are needed for the reliable provision of electric supply at a reasonable cost.

Therefore, the purposess of this Act is are to:

- (1) Allow [Require] the department of budget and finance to enter into a step-in agreement with an independent power producer under which the department of budget and finance will agree to make required payments from moneys received from independent power producers related to power purchase charges and reserve fees to the independent power producer after a failure by the electric utility to make required payments pursuant to the terms of a power purchase agreement;
- (2) Allow the department of budget and finance to [Eestablish] establish a trust fund outside the state treasury, that shall be capitalized by [revenues]

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money from a surcharge supporting a reserve account and, in the event of a default, by money received [revenues] from power purchase charges, in each case associated with covered power purchase agreements, for the fulfillment of payment obligations arising from the power purchase agreement;

(3) Establish that [revenues] money collected from on-bill charges associated with covered power purchase agreements and money [revenues] from a surcharge supporting a reserve account that are deposited in the trust fund established by the department of budget and finance shall be held in trust by the State, and that independent power producers shall hold a beneficial interest in [the] such moneys [revenues] to the extent of the amounts owed to such independent power producers under the covered power purchase agreements; and

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

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

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"PART . STEP-IN AGREEMENTS COVERING. STEP-IN AGREEMENTS COVERING POWER PURCHASE COSTSCOSTS

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

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

"Default" means the failure by an electric utility to pay power purchase costs as and when due to an obligee under a covered power purchase agreement, after the expiration of any applicable grace or cure periods and extensions thereto. "Default" [does][shall] not mean a bankruptcy filing by an electric utility.

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

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

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

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

"Investment grade status" means a credit rating for the electric utility's senior unsecured long-term debt

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obligations or an issuer credit rating for the electric utility, in each case, without regard for third-party credit enhancements, from at least two out of three of the following:

- (1) BBB- or higher for S&P Global Ratings, or any successor by law;
- (2) BAA3 or higher by Moody's Investor Services, Inc., or any successor by law; or
- (3) BBB- or higher by Fitch Ratings, Inc., or any successor by law.

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

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

"Power purchase charges" means the on-bill charges, excluding reserve fees, authorized by the public utilities commission to be imposed on and collected from all existing and

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future customers of an electric utility or any successor for _power purchase costs, including but not limited to the _energy cost recovery clause and the purchased power adjustment clause.

"Power purchase costs" means costs incurred by an electric utility pursuant to the terms of a power purchase agreement[. "Power purchase costs" includes] 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. "Power purchase costs" include, without limitation, all categories of costs recoverable under the energy cost recovery clause and the purchased power adjustment clause under [its]their respective tariffs in effect on July 1, 2025.

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

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

"Revenue" means moneys from power purchase charges and reserve fees net of any applicable taxes or government

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fees, including but not limited to the franchise tax, public service company tax, and public utility commission fee.

"Step-in agreement" means a contract by which the department undertakes the obligation of payment for power purchase costs owed to an obligee as and when due by an electric utility under a power purchase agreement following a default, as described in section 269-B(a); provided that the department's payment obligation under such step-in agreement is limited [solely] to the [revenues] moneys from power purchase charges and reserve fees collected in connection with the covered power purchase agreements and on deposit in the fund established pursuant to section 269-D.

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

[§]§ 269-B Step-in agreements.

(a) The department shall enter into a step-in agreement with an obligee after receipt of satisfactory results (as determined by the department solely within the department's discretion) from a due diligence investigation by the department of an obligee and the step-in agreement. Such step-in agreement shall 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. [; provided that before entry into any agreement, the department may conduct due diligence, including through communication with the prospective

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obligee, on the prospective obligee.]. Pursuant to such step-in agreement and upon the default, the department shall make payments to the obligee for power purchase costs with moneys [from] on deposit in the fund as and when due by the electric utility under the covered power purchase agreement; provided that any such step-in agreement shall provide that the department's payment obligation thereunder shall be [solely] limited to the [revenues] moneys from power purchase charges and reserve fees collected in connection with [the] covered power purchase agreements that are on deposit in the fund established by the department pursuant to section 269-

D. Each step-in agreement shall include a clause stating that neither the full faith and credit of the State nor any other moneys of the State will be pledged for any obligations pursuant to the terms of [a step-in agreement.]the step-in agreement and that[. In]any action concerning a [breach]failure by the department to comply with the terms of the step-in agreement, the sole and exclusive remedy available to an obligee and the electric utility against the department shall be an order directing specific performance of the step-in agreement and under no circumstances shall the department be liable for any costs, expenses or other monetary relief and/or compensatory damages.. An obligee of a covered power purchase agreement shall have no claim or lien on any moneys of the State, . An obligee of a covered power purchase agreement

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except for those shall only have a claim or lien [e revenues] on moneys [from the power purchase charges and reserve fees] attributable to covered power purchase agreements that are transferred by the electric utility and on deposit in the fund established by the department pursuant to section 269-D. An obligee shall remain entitled to all payments for power purchase costs owed under the covered power purchase agreement, whether or not the moneys [revenues] from power purchase charges attributable to the covered power purchase agreement are timely collected. 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] on deposit in the fund arising out of termination of a power purchase agreement by the electric utility under bankruptcy law.

(b) The department [shall] may enter into a step-in agreement only if the power purchase agreement subject to the step-in agreement arises from the Stage 3 request for proposals under docket number 2017-0352 before the public utilities commission or the first Integrated Grid Planning request for proposals issued under docket number 2024-0258 before the public utilities commission. The department [shall] may enter into a step-in agreement related to a [when the] power purchase agreement when the power purchase agreement [subject to the step-in agreement] is executed, or if

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the power purchase agreement has already been executed as of July 1, 2025, as soon as reasonably possible.

(c) The payment obligation of the department under a step-in agreement shall commence not later than two days after the date of a notice [from] given by the department to the electric utility pursuant to section 269-C(a).

(d) The step-in agreement shall terminate when the credit rating of the electric utility or its successor achieves investment grade status or by express agreement of the obligee, department, and electric utility. [Upon] Following the termination of a step-in agreement, the department shall have no obligation to the electric utility or the obligee upon a default by the electric utility.

(e) Following a default of a covered power purchase agreement and any payment by the department from [monies] moneys in the fund, the electric utility, through agreement with all obligees of its covered power purchase agreements, may elect to resume payments for power purchase costs owed by the electric utility, regardless of the credit rating of the electric utility at that time, in which case the electric utility shall cease to transfer[turn over] revenues representing moneys from power purchase charges collected in connection with the covered power purchase agreement to the [power purchase costs trust] fund as described in section 269-C(a), and may use the revenues from power purchase charges

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through the vesting of title in the electric utility as described in subsection (h); provided that the payments shall not terminate the step-in agreement, which shall remain in effect until terminated pursuant to subsection (d), and the department shall remain obligated to pay the obligee upon a subsequent default by the electric utility solely from [monies] moneys on deposit in the fund established pursuant to section 269-D; provided however, that no such election by the electric utility is permitted if the department has made payment for power purchase costs with moneys from the reserve fees.

(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; provided that the conditions and terms shall not adversely affect the obligation of the department to make [prompt and full] payments, but only to the extent there are [monies] moneys in the fund, forfund, for power purchase costs owed by an electric utility to the obligee as and when due in the event of a default as required by section 269-B(a) or otherwise be inconsistent with the covered power purchase agreement.

(g) As consideration for the department entering into the a step--in agreement, the electric utility or its successor shall enter into an agreement to assign and transfer title to the revenues from power purchase charges and reserve fees attributable to the covered power purchase agreement to

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the department to be held in trust for the benefit of the obligees under the covered power purchase agreements to the extent of the amounts owed to such obligees. The assignment and transfer of title to the revenues by the electric utility shall be made and remain for the term of the step-in agreement free and clear of any prior lien, pledge, security interest, or encumbrance of any kind, and shall be exempt from section 269-19. The revenues shall not be subject to appropriation for any other purpose. The revenues shall be exempt from the requirements of chapters 36 and 38. The electric utility or its successor shall be and remain at all times, even upon the occurrence and during the continuance of a default by the electric utility or its successor, obligated to bill and collect the power purchase charges and reserve fees [and manage the associated revenues] as an agent for the department to effectuate the purposes of this part.

(h) 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 related to moneys 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

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electric utility or its successor is made to the obligee. Any vesting of [revenues] moneys from power purchase charges to the electric utility at the time of payment may be made without appropriation by the legislature or allotment. The department shall not otherwise assign, sell, or transfer any title to, or any claim or right to, the revenues from power purchase charges or reserve fees.

(i) To meet the requirements of the State and the public utilities commission as they pertain to electric reliability, energy security, and energy diversification under this chapter and any rules adopted pursuant thereto, the electric utility shall ensure that it maintains sufficient availability of electric energy and related products, to the extent provided by an obligee in accordance with a covered power purchase agreement. The public utilities commission shall may exercise its regulatory powers to ensure that the electric utility complies with its obligations under the covered power purchase agreement.

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

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- (1) ___Generate sufficient [revenues] moneys from power purchase charges to timely and fully pay amounts when owed and due under covered power purchase agreements;
- (2) ___Ensure that in no event shall moneys [revenues]from power purchase charges fall below the amounts owed and due under covered power purchase agreements by a sum that exceeds the amounts in the [power purchase costs] reserve [fund]account established under section 269-E; and
- (3) ___Recover any applicable taxes and government fees and any incremental administrative costs of the electric utility or the department incurred to implement the requirements of this part.

To achieve the objectives established pursuant to this subsection, unless the public utilities commission otherwise directs, the electric utility may retain revenues collected from power purchase charges in excess of amounts owed and due under the covered power purchase agreements. Any moneys in the account established under the fund related to reserve fees will remain with the department. The obligations of the electric utility and of the public utilities commission under this section shall survive any default by the electric utility and shall terminate only upon the termination of the step-in agreement as provided in subsection (d).

.B. NO.

~~[(k)]~~ If the electric utility fails to timely file any submission as described in subsection (j), the department shall promptly file, or direct the electric utility to promptly file pursuant to section 269-F(a), and the public utilities commission shall allow to become effective, a substitute submission as if the submission had been filed by the electric utility under subsection (j). The electric utility shall implement the power purchase charges in the substitute submission from the department.]

~~[\$]~~ \$ 269-C_ _Default of electric utility; successor requirements. _.

(a) If [After] the obligee provides notice to the department of a default of a covered power purchase agreement, the department shall promptly provide the electric utility with a copy of such notice of the default. [Two] One days after the electric utility receives the notice, the electric utility shall [turn over]transfer all revenues from the power purchase charges arising from any covered power purchase agreements identified in the notice and reserve fees [arising from any covered power purchase agreements identified in the notice], regardless of when collected, then in its possession, and, subject to section 269-B(e), all future revenues from the power purchase charges and reserve fees thereafter collected to the fund established pursuant to section 269-D(a). These amounts shall include all revenues received by the electric utility

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after a default for such power purchase charges and reserve fees billed before the default. The department shall use the revenues collected from the power purchase charges and reserve fees[,] on deposit in fund established by the department pursuant to section 269-D [including the revenues turned over,] only in the order as follows:

- (1) To pay power purchase costs pursuant to step-in agreements, subject to the appointment, authorization, and empowerment of the electric utility as an agent as described in section 269-F(e)[, and for revenues in excess of amounts owed under covered power purchase agreements;)];; and for revenues in excess of amounts owed under covered power purchase agreements;;
- (2) To recover any incremental administrative costs of the electric utility or the department incurred to implement the requirements of this part; and
- (3) To implement a rate credit to customers.
- (b) Any step-in agreement shall remain in effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.
- (c) The obligation of the electric utility to collect and remit the revenues from power purchase charges and reserve fees pursuant to the requirements of this part shall not be subject to any setoff, counterclaim, surcharge, or

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defense by the electric utility, or in connection with a bankruptcy of any electric utility.

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

(e) If the step-in agreement is terminated as described in section 269-B(d), then by operation of law, any title to the revenues [from] related to power purchase charges [and reserve fees] attributable to the covered power purchase agreement shall immediately cease to be held in trust and the electric utility or its successor shall thereafter be the sole holder of title or beneficial and equitable interest in, and any claim or right to, the [revenue]revenues related to power purchase charges, and the obligation of the electric utility or its successor to bill and collect the power purchase charges and reserve fees [and manage the revenues] as an agent for the department, and, if applicable, to remit the collected revenues to the fund, shall terminate.

[§]§ 269-D **Power purchase costs trust fund.** .

.B. NO.

(a) There is established outside the state treasury the power purchase costs trust fund to be administered by the department. The department shall establish and maintain two separate accounts within the fund, the first account to be utilized for the deposit of all power purchase charges transferred by the electric utility and the second account to be utilized for the deposit of reserve fees transferred by the electric utility. The electric utility shall [deposit] transfer to the department for deposit into the applicable account in the fund all revenues collected in connection with covered power purchase agreements from~~:~~:

- (1) Power purchase charges in the event of a default of covered power purchase agreements~~;~~ and
- (2) Reserve fees.

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

(c) If [the] a step-in agreement is terminated as described in section 269-B(d), the fund shall cease to receive any [revenues] moneys from the power purchase charges collected by the electric utility or its successor and the department shall pay to the electric utility or its successor the

.B. NO.

remainder of any moneys in the fund attributable to power purchase charges. Those moneys from power purchase charges shall be considered [revenues] [monies] moneys of the electric utility or its successor. [Query: If one step-in agreement is terminated does it effect all other agreements?]

§(d) The department shall be under no obligation to make payment to any obligee in excess of the moneys in the fund. Any default or failure by the department to make payments pursuant to the terms of a step-in agreement under this part shall not result in any recourse by the electric utility or obligee to any funds of the State. The only moneys an obligee shall have the benefit of are moneys [other than the revenues] derived from power purchase charges and the [surcharge] reserve fee [for the reserve account] collected and on deposit in the fund. In any action concerning a breach by the department of a step-in agreement, the sole and exclusive remedy available to an obligee and the electric utility against the department shall be an order directing specific performance of the step-in agreement and under no circumstances shall the department be liable for any costs, expenses or other monetary relief and/or compensatory damages.

§ 269-E Reserve account; establishment.

(a) By August 1, 2025, the public utilities commission [shall] may create a utility-wide nonbypassable surcharge[authorize surcharges proposed by an electric

.B. NO.

utility], referred to as reserve fees, which shall be deposited into an account within the fund established under section 269-D and be pledged to secure and be applied to the repayment of payment obligations under a covered power purchase agreement to the extent that there is a shortfall in the amount of power purchase charges on deposit in the fund. Reserve fees shall be collected by the electric utility or its successors, as collection agents for the department, in full through a surcharge, that is separate and apart from the electric utility's rates. [Reserve fees may be included in the purchased power adjustment clause on customer bills.] The department shall establish and maintain a separate account within the fund established under section 269-D to accept and account for revenues from reserve fees [as part of the fund established under section 269-D], and the electric utility shall within one day of receipt [promptly deposit] transfer all revenues collected from the surcharge related to the reserve fees directly into [the] such account. The electric utility shall not otherwise assign, sell, or transfer any title to, or any claim or right to, the revenues from reserve fees, except as provided under this part. The electric utility shall not access the reserve account or utilize the revenues deposited therein, except as directed by the department pursuant to section 269-F(e). The public utilities commission may require, in the financing order creating the surcharge,

.B. NO.

that, if a default by the electric utility in remittance of the reserve fee collected occurs, the public utilities commission, upon the application by the department, and without limiting any other remedies available to the department by reason of the default, shall order the sequestration and payment to the department of the reserve fee. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.

(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.

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

~~[(d)~~ In the special circumstances of this part, the legislature finds and declares that the reasonable reserve requirement of article VII, section 13, clause 8 of the Hawaii

.B. NO.

State Constitution, to the extent applicable, has been satisfied.]

[§]§ 269-F Electric utility; agent of the department.

(a) To implement the requirements of this part, the department may[mayshall] contract with an electric utility or its successor to act as an agent of the department to provide billing, collection, payment, [management,] and other related services. In any action concerning a breach by the department of the agency agreement, the sole remedy available to an electric utility against the department shall be an order directing specific performance of the agency agreement. Under no circumstances shall the department be liable for any costs, expenses or other monetary relief and/or compensatory damages in connection with a breach of any agency agreement.

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

(c) The act of serving as an agent to bill and to collect the power purchase charges and reserve fees shall not cause any electric utility to be subject to the laws that regulate financial institutions, escrow depositories, or collection agencies. An electric utility shall not be responsible for lending, underwriting, and credit

.B. NO.

determinations in respect to these billing and collection activities.

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

(e) ___To implement the requirements of this part, the director of finance may appoint, authorize, and empower the electric utility, as agent for and on behalf of the department, to [manage] collect and pay out moneys, including from the fund, for fulfillment of payment obligations of the department arising from step-in agreements related to covered power purchase agreements. ___The appointment shall terminate when the step-in agreement is terminated as described in section 269-B(d)."

SECTION 3. ___If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

.B. NO.

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

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

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 and, 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.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



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PUBLIC UTILITIES COMMISSION
465 S. KING STREET, #103
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Testimony of the Public Utilities Commission

To the
Senate Committees on
Commerce and Consumer Protection
and
Energy and Intergovernmental Affairs

March 20, 2025
9:30 a.m.

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

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:

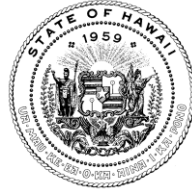
The Commission supports the intent of this measure to encourage the continued development of affordable clean energy resources for the benefit of utility customers in the State.

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.



JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Energy and Intergovernmental Affairs
And
Senate Committee on Commerce and Consumer Protection
Thursday, March 20, 2025
9:30 a.m.
Conference Room 229

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

Chair Wakai, Chair Keohokalole, 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 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 recommends that the legislation be modified to require that independent power producers (IPPs) provide information and evidence within a docketed proceeding before the Public Utilities Commission on the financing terms and conditions that they were receiving or received:

- prior to the downgrade of Hawaiian Electric's credit rating due to the Maui wildfires,
- after the downgrade, and
- after the establishment of this legislation.

The information is needed to help ensure that the legislation enables IPPs to *verifiably* deliver on the intended benefit to the State and ratepayers of obtaining clean energy generation that is more cost effective and deployed in greater amounts than would be possible absent the legislation.

As the legislation is currently drafted, it does not include a mechanism to evaluate whether it resulted in the IPPs providing better power purchase agreement (PPA) pricing to customers and greater deployment of renewable energy. The legislation would also increase rates for Hawaiian Electric's customers for a period to establish the reserve account to provide a cushion to ensure that IPPs under a "covered power purchase agreement" are always paid in full. These additional fees go toward establishing the reserve account.

The Department believes that the legislation appears to provide a significant benefit to IPPs in that it addresses their key concerns regarding their ability to obtain financing for their projects because of their lenders' concerns that Hawaiian Electric would be allowed to stop paying IPPs for the energy that they provided to Hawaiian Electric.¹ However, there is not a readily apparent means to evaluate whether the legislation, if approved, *would* result in decreased pricing on PPAs to ratepayers or *would* enable IPPs to obtain financing for their renewable projects to allow them to proceed with their project. Importantly, however, the legislation *would* raise rates on Hawaiian Electric's customers

¹ See e.g., Ameresco's Written Testimony to the Committee on Energy & Environmental Protection on the initial draft of House Bill 974.

for a period through the reserve fees used to fund the Reserve Account in the proposed legislation's Hawaii Revised Statutes § 269-E. For those reasons, the Department recommends including language that requires the IPPs to file the terms and conditions of their financing arrangements with lenders to the Commission.

The Department believes that this legislation could help provide a means to enable more cost-effective deployment of renewable energy more rapidly than without the legislation. However, it is critical that the legislation includes a mechanism to provide greater assurance that it is enabling IPPs to deliver the intended benefits to the State and ratepayers. For these reasons, the Department recommends that the bill's language be modified to require IPPs to provide information and evidence on the financing terms and conditions, as described above, to evaluate whether the State and ratepayers are receiving the benefits that the legislation intends to deliver. The Department also notes to the Committee the amendments to the proposed legislation provided by the Attorney General and the past testimony of the Attorney General and Department of Budget and Finance for appropriate consideration.

Thank you for the opportunity to testify on this bill.

Senator Glenn Wakai, Chair
Senator Stanley Chang, Vice Chair
Committee on Energy and Intergovernmental Affairs

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Committee on Commerce and Consumer Protection

Thursday, March 20, 2025; 9:30 a.m.
Conference room 229 & Videoconference

RE: HB 974 HD1 Relating to Energy – In Support

Aloha Chairs Wakai and Keohokalole, Vice Chairs Chang and Fukunaga, and members of the Committees:

Plus Power appreciates this opportunity to submit testimony in support of 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 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



Senator Glenn Wakai, Chair
Senator Stanley Chang, Vice Chair
Committee on Energy & Intergovernmental Affairs

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Committee on Commerce and Consumer Protection

Thursday, March 20, 2025; 9:30 a.m.
Conference Room 229 & Videoconference

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

Aloha Chairs Wakai and Keohokalole, Vice Chairs Chang and Fukunaga, and members of the Committees,

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", is written over a horizontal line.

Wren W. Wescoatt
Vice President of Development
wren.wescoatt@longroadenergy.com
808-780-1000



March 17, 2025

Via Electronic Submittal

Committee on Energy and Intergovernmental Affairs
Senator Glenn Wakai, Chair
Senator Stanely Chang, Vice Chair

Committee on Commerce and Consumer Protection
Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

Thursday, March 20, 2025; 9:30 a.m.
Conference Room 229 & Videoconference

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

Aloha Chairs Wakai and Keohokalole, Vice Chairs Chang and Fukunaga, and members of the Committees:

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. We are continuing to discuss possible amendments with Hawaiian Electric and the State to ensure that the details of the step-in agreement are structured to best support renewable energy financing. We encourage the Committee to pass HB 974 HD1.

Thank you for the opportunity to testify on this matter.

Nicola Park
Director, Hawaii
Clearway Energy Group



**Hawaiian
Electric**

**TESTIMONY BEFORE THE SENATE COMMITTEES ON
ENERGY & INTERGOVERNMENTAL AFFAIRS AND
COMMERCE & CONSUMER PROTECTION**

**SUPPORT OF HB 974, HD1
Relating to Energy**

Thursday, March 20, 2025
9:30AM
State Capitol, Conference Room 229

Colton Ching
Senior Vice President, Planning & Technology
Hawaiian Electric

Dear Chairs Wakai and Keohokalole, Vice Chairs Chang and Fukunaga, and Members of the Committees,

My name is Colton Ching and I am testifying on behalf of Hawaiian Electric in **strong support** of HB 974 HD1, Relating to Energy, with proposed amendments.

Hawaiian Electric strongly believes in the benefits that this bill can provide to customers and has been actively working through issues raised by State agencies (the Department of Budget and Finance, the Department of the Attorney General, and the Consumer Advocate) and independent power producers (“IPPs”) so that the bill can ultimately be successful and achieve its intended result. HB 974 HD1 incorporates many amendments that were introduced to address the concerns of the State agencies and IPPs and is our preferred version of the bill. In an ongoing effort to address concerns raised by these stakeholders, Hawaiian Electric would like to respectfully suggest additional improvements to this bill, the majority of which were developed through discussion with State agencies and IPPs, as shown and explained in the attached two documents. For ease of review, the first attachment details our proposed amendments and the reasons for their inclusion, and the second attachment is a comprehensive redline showing our proposed changes.

HB974 HD1 would provide significant benefits to Hawaiian Electric's customers by helping to avoid higher-cost contracts with IPPs and helping to ensure the successful development of new renewable energy projects, thereby promoting system reliability.

IPPs responding to Hawaiian Electric's most recent Stage 3 Request for Proposals ("RFP") have indicated that Hawaiian Electric's current sub-investment-grade credit rating raises concerns from their financing parties about the assurance of payments to be made by Hawaiian Electric pursuant to power purchase agreements ("PPAs") with the IPPs. 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 and the State's energy policies.

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. New generation projects will add much needed renewable energy sources that will help maintain system reliability. If new generators are not added timely, there will be less generation available to deal with unplanned plant shutdowns and emergency maintenance.

Additionally, new renewable energy projects are needed to help meet the State's Renewable Portfolio Standards ("RPS") 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 RPS requirements, 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 PPAs 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. 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 for Hawaiian Electric's Stage 3 RFP projects, with any remaining amount being returned once the utility regains its investment-grade credit rating. 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 every month over the 20- to 30-year term of their contracts.

Hawaiian Electric believes that the customer benefits provided by this bill far outweigh the costs imposed. Given current conditions, Hawaiian Electric also believes this bill offers the best solution to address IPPs' financing concerns. Accordingly, Hawaiian Electric strongly supports HB 974 HD1 with proposed amendments. Thank you for this opportunity to testify.

Encl: 2 Attachments

Proposed Amendments to HB 974 HD1

Hawaiian Electric respectfully requests adoption of all of the proposed amendments in the attached redline of HB 974 HD1. This bill, and the redlined amendments, emerged from extensive discussions with independent power producers ("IPPs") and the State. They reflect ongoing and cooperative efforts to design the bill in a manner that addresses the principal concerns of stakeholders.

- **Limiting recourse to the State:** by expressly identifying the department as the counterparty to a step-in agreement (as opposed to the State); making clear that the full faith and credit of the State is not pledged for the step-in agreements; providing that the department is not obligated to pay for any amounts in excess of moneys on deposit in the fund; providing for due diligence by the department of the IPP counterparties; and limiting judicial remedies in the case of a failure by the department to performance of the step-in or agency agreements.
- **Ensuring timely payment to IPPs:** by requiring payment under the step-in agreement be made "as and when due" under the covered power purchase agreement ("PPA"); establishing a reserve for payment to the IPPs to account for forecasting deviations; ensuring payment of PPAs has first priority status for revenues collected; and inclusion of termination payments if the utility terminates the PPA.
- **Avoiding financial impacts to ratepayers:** by reducing the risk exposure to IPPs and financing parties from Hawaiian Electric's sub-investment grade rating; refunding customers all collected and unused revenues upon termination of the step-in agreement; and minimizing administrative costs by requiring the department to execute an agency agreement with the utility.
- **Ensuring the bill does not benefit Hawaiian Electric:** by establishing the reserve as a separate account in the trust fund, inaccessible to the utility unless otherwise permitted by the department, and only upon default; and eliminating any ability for the utility to possess title over the revenues from reserve fees.

Additional proposed amendments were made for clarity and consistency purposes. We provide further explanation of the redline below.

I. Legislative Findings

~~—~~The legislature further finds that the public interest would be served if the department of budget and finance enters into "step-in agreements" with independent power producers, pursuant to which the department of budget and finance would agree to make payments to the independent power producers after a failure by an electric utility to make required payments pursuant to the terms of the power purchase agreements.~~—~~ The department of budget and finance's obligation to make payments pursuant to the terms of a step-in agreement is limited ~~solely~~ to the revenues received from power purchase charges associated with a power purchase agreement subject to a step-in agreement.~~—~~ and reserve fees that are on deposit in the power purchase costs trust fund established by the department of budget and finance. Neither the full faith and credit of the State, nor any other moneys of the State, will be pledged for any obligations under a step-in agreement.

Based on feedback from the State, the proposed amendments clarify that the payment obligations of the department are limited to the revenues from power purchase charges and reserve fees that are "on deposit" in the power purchase costs trust fund. Additional proposed amendments throughout the attached redline ensure that this language is consistently applied.

~~—~~The legislature finds that step-in agreements may provide assurances that payments for purchased power will be made to independent power producers as and when due by the utility under the covered power purchase agreements.~~—~~ The legislature also finds that the intent of this Act is further served by appointing, authorizing, and empowering the electric utility to serve as the billing, collection, payment, and management agent of the department of budget and finance.~~—~~ Prior to a payment default by the electric utility, the electric utility will be authorized to utilize ~~such revenues~~revenues from power purchase charges to discharge its obligations to pay independent power producers for electric energy and related products.~~—~~ The obligations of the department of budget and finance under this Act are undertaken for a public purpose, namely, the protection of public health, safety, and welfare by supporting the development of clean energy resources that are needed for the reliable provision of electric supply at a reasonable cost.

~~—~~Therefore, the purpose of this Act is to:

~~—~~(1)~~—~~ Require the department of budget and finance to enter into a step-in agreement with an independent power producer under which the department of budget and finance will agree to make required payments from revenues from power purchase charges and reserve fees to the independent power producer after a failure by the electric utility to make required payments pursuant to the terms of a power purchase agreement;

~~—~~(2)~~—~~ Establish Require the department of budget and finance to establish a trust fund outside the state treasury, that shall be capitalized by revenues from a surcharge supporting a reserve account and, in the event of a default, by revenues from power purchase charges, in each case associated with covered power purchase agreements, for the fulfillment of payment obligations arising from the power purchase agreement;

The proposed edits clarify that the department is required to establish a trust fund under this legislation.

Based on feedback from the State, the proposed amendments further clarify that (1) payment prior to default by the utility is from power purchase charges; (2) payment after default by the department is from power purchase charges *and* reserve fees.

II. § 269-A (Definitions)

~~—— "Power purchase costs" means costs incurred by an electric utility pursuant to the terms of a power purchase agreement. "Power purchase costs" includes 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. "Power purchase costs" include, without limitation,~~ all categories of costs recoverable under the energy cost recovery clause and the purchased power adjustment clause under ~~its~~their respective tariffs in effect on July 1, 2025.

Several IPPs indicated that the legislation should address recovery of termination costs to address concerns of financing parties. To be clear, Hawaiian Electric does not have any intention of ever terminating these power purchase agreements. It is therefore highly unlikely that any termination fees will need to be paid. However, for the purposes of ensuring lowest-cost PPAs, the proposed amendments modify this definition to address this issue.

~~—— "Reserve account" refers to the account established within the fund pursuant to section 269-D(a) for deposit and accounting of revenues from reserve fees.~~

This proposed amendment is for clarity and consistency when the legislation refers to the reserve account.

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

This proposed amendment is necessary for clarity, to ensure separate treatment of revenue from power purchase charges and revenue from reserve fees.

III. § 269-B (Step-in agreements)

(a) — 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. ~~—; provided that before entry into any agreement, the department may negotiate reasonable terms based on due diligence, including through communication with the prospective obligee, on the prospective obligee and the step-in agreement.~~ Pursuant to such step-in agreement and upon the default, the department shall make payments to the obligee for power purchase costs with moneys ~~from~~ on deposit in the fund as and when due by the electric utility under the covered power purchase agreement; provided that any such step-in agreement shall provide that the department's payment obligation thereunder shall be ~~solely~~ limited to the revenues from power purchase charges and reserve fees collected in connection with ~~the~~ covered power purchase agreements. ~~that are on deposit in the fund.~~ Each step-in agreement shall include a clause stating that neither the full faith and credit of the State nor any other moneys of the State will be pledged for any obligations pursuant to the terms of ~~a step-in agreement.~~ the step-in agreement and that in any action concerning a failure by the department to comply with the terms of the step-in agreement, the sole and exclusive remedy available to an obligee and the electric utility against the department shall be an order directing specific performance of the step-in agreement and under no circumstances shall the department be liable for any costs, expenses, or other monetary relief and/or compensatory damages. 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~~ collected in connection with the covered power purchase agreement and on deposit in the fund. An obligee shall remain entitled to all payments for power purchase costs 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. 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 on deposit in the fund arising out of termination of a power purchase agreement by the electric utility under bankruptcy law.

1. The proposed amendments provide that the State may negotiate reasonable terms based on due diligence on the prospective IPP counterparty and the step-in agreement, including through communication with the IPP.
2. Based on feedback from the State, the proposed amendments limit the only judicial remedy against the department to specific performance of the step-in agreement and excludes monetary relief or damages.
3. Based on feedback from the IPPs, the proposed amendments include language that the IPP shall remain entitled to all payments owed under covered PPAs, even if the revenues for any particular month were not timely collected—that is, the IPPs remain entitled to be made whole if revenues arrive later than expected or are delayed, perhaps due to under-recovery in any particular month.

4. Consistent with the proposed amendment to the definition of "power purchase costs", the proposed amendments for § 269-B(a) include language addressing the recovery of termination fees.

———(e)—— Following a default of a covered power purchase agreement and any payment by the department from monies in the fund, the electric utility, through agreement with all obligees of its covered power purchase agreements, may elect to resume payments for power purchase costs owed by the electric utility, regardless of the credit rating of the electric utility at that time, in which case the electric utility shall cease to turn over revenues from power purchase charges collected in connection with the covered power purchase agreement to the ~~power purchase costs trust~~ fund as described in section 269-C(a), and may use the revenues from power purchase charges through the vesting of title in the electric utility as described in subsection (h); provided that the payments shall not terminate the step-in agreement, which shall remain in effect until terminated pursuant to subsection (d), and the department shall remain obligated to pay the obligee upon a subsequent default by the electric utility solely from monies on deposit in the fund; provided however, that no such election by the electric utility is permitted if the department has made payment for power purchase costs with moneys from the reserve account, unless the electric utility fully replenishes the reserve account for the moneys drawn from the reserve account by the department for payment.

This provision addresses the assumption of PPAs by the utility in a bankruptcy event. Based on feedback from the State, the proposed edits provide that any assumption of PPAs by the utility in bankruptcy is disallowed if the department has made payment with moneys from the reserve account, unless the utility replenishes the reserve account in full for such payment.

———(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; provided that the conditions and terms shall not adversely affect the obligation of the department to make payments for power purchase costs owed by an electric utility to the obligee as and when due in the event of a default as required by section 269-B(a) or otherwise be inconsistent with the covered power purchase agreement.

Based on feedback from the IPPs, this proposed amendment clarifies that other terms and conditions imposed in a step-in agreement should not impede payments as and when due for power purchase costs owed under the PPA.

~~— (g) —~~ As consideration for the department entering into the step-in agreement, the electric utility or its successor shall enter into an agreement to assign and transfer title to the revenues from power purchase charges ~~and reserve fees~~ attributable to the covered power purchase agreement to the department to be held in trust for the benefit of the ~~obligees~~ under the covered power purchase agreements to the extent of the amounts owed to such ~~obligees~~. — The assignment and transfer of title to the revenues from power purchase charges by the electric utility shall be made and remain for the term of the step-in agreement free and clear of any prior lien, pledge, security interest, or encumbrance of any kind, and shall be exempt from section 269-19. The revenues from power purchase charges and reserve fees shall not be subject to appropriation for any other purpose. ~~— The revenues, and~~ shall be exempt from the requirements of chapters 36 and 38. ~~—~~ The electric utility or its successor shall be and remain at all times, even upon the occurrence and during the continuance of a default by the electric utility or its successor, obligated to bill and collect the power purchase charges and reserve fees and manage the associated revenues as an agent for the department to effectuate the purposes of this part.

Based on feedback from the IPPs, this proposed amendment ensures that all transfer of title of revenues of power purchase charges from the utility to the department shall be free of encumbrances. The additional edit of "associated" is proposed for clarity.

~~— (h) —~~ 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~~. — Any vesting of revenues to the electric utility at the time of payment may be made without appropriation by the legislature or allotment. ~~—~~ The department shall not otherwise assign, sell, or transfer any title to, or any claim or right to, the revenues from power purchase charges or reserve fees.

Based on feedback from the IPPs, the proposed amendment at the beginning of this subsection (h) ensures greater precision as to the reference to an order of relief under bankruptcy law.

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

~~— (1) —~~ Generate sufficient revenues from power purchase charges to timely and fully pay amounts when owed and due under covered power purchase agreements;

~~— (2) —~~ Ensure that in no event shall revenues from power purchase charges fall below the amounts owed and due under covered power purchase agreements by a sum that exceeds the amounts in the ~~power purchase costs~~ reserve ~~fund~~account established under section 269-E; and

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

~~—~~ To achieve the objectives established pursuant to this subsection, unless the public utilities commission otherwise directs, the electric utility may retain revenues collected from power purchase charges in excess of amounts owed and due under the covered power purchase agreements. ~~—~~ Prior to default, any moneys in the reserve account shall remain with the department. The obligations of the electric utility and of the public utilities commission under this section shall survive any default by the electric utility and shall terminate only upon the termination of the step-in agreement as provided in subsection (d).

These proposed amendments ensure recovery of taxes and fees, and administrative costs of the department *and* the electric utility, consistent with recovery of the electric utility's administrative costs as provided under § 269-C(a)(2). It also clarifies that moneys in the reserve account are not accessible prior to default. The remainder (the use of the term "account" and insertion of "from power purchase charges") are proposed for clarity and consistency.

~~— (k) —~~ If anthe obligee provides notice to the department that the electric utility ~~fails~~has failed to timely file any submission as described in subsection (j), the department shall promptly file, or direct the electric utility to promptly file pursuant to section 269-F(a), and the public utilities commission shall allow to become effective, a substitute submission as if the submission had been filed by the electric utility under subsection (j). ~~—~~ The electric utility shall implement the power purchase charges in the substitute submission from the department.

Because the department may not be positioned to know whether the utility has failed to timely file a monthly rate adjustment, this proposed amendment allows an obligee to provide notice to the department that the utility has failed to do so, and the department thereafter shall file or direct the utility to file such submission, pursuant to the agency agreement that the department has entered into with the utility. This proposed amendment was based on feedback from the State.

IV. § 269-C (Default of electric utility; successor requirements)

(a) ~~—If~~ After the obligee provides notice to the department of a default of a covered power purchase agreement, the department shall promptly provide the electric utility with a copy of such notice of ~~the~~ default. ~~—~~ Two days after the electric utility receives the notice, the electric utility shall turn over all revenues from the power purchase charges ~~and reserve fees~~ arising from any covered power purchase agreements identified in the notice and associated reserve fees, regardless of when collected, then in its possession, and, subject to section 269-B(e), all future revenues from the power purchase charges and reserve fees thereafter collected to the fund ~~established pursuant to section 269-D(a).~~ ~~—~~ These amounts shall include all revenues received by the electric utility after a default for such power purchase charges and reserve fees billed before the default. ~~—~~ The department shall use the revenues collected from the power purchase charges and reserve fees, including on deposit in the ~~revenues turned over, fund~~ only in the order as follows:

~~—(1) —~~ To pay power purchase costs pursuant to step-in agreements, subject to the appointment, authorization, and empowerment of the electric utility as an agent as described in section 269-F(e), ~~and for revenues in excess of amounts owed under covered power purchase agreements;~~ and ~~—~~ for revenues in excess of amounts owed under covered power purchase agreements,

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

Based on feedback from the IPPs, the proposed amendments insert the word "promptly" to ensure timely enforcement of the step-in agreement through prompt performance by the utility, and the department, of their obligations under the step-in agreement.

The remainder are proposed for clarity and consistency.

~~—(e) —~~ If the step-in agreement is terminated as described in section ~~269-B(d)~~, then by operation of law, any title to the revenues from power purchase charges ~~and reserve fees~~ attributable to the covered power purchase agreement shall immediately cease to be held in trust and the electric utility or its successor shall thereafter be the sole holder of title or beneficial and equitable interest in, and any claim or right to, ~~the revenues~~ such revenues, and the obligation of the electric utility or its successor to bill and collect the power purchase charges and reserve fees and manage the revenues as an agent for the department, and, if applicable, to remit the collected revenues to the fund, shall terminate.

Based on feedback from the State, the proposed edit ensures that the utility never holds title over the reserve fees from their inception and even after termination of the step-in agreement.

V. § 269-D (Power purchase costs trust fund)

~~(a)~~— There is established outside the state treasury the power purchase costs trust fund to be administered by the department.— The department shall establish and maintain two separate accounts within the fund, the first account to be utilized for the deposit and accounting of all revenue from power purchase charges by the electric utility pursuant to section 269-C(a), and the second separate account to be utilized for the deposit and accounting of all revenue from reserve fees by the electric utility pursuant to section 269-E(a). The electric utility shall deposit into the applicable account in the fund all revenues collected in connection with covered power purchase agreements from—

- ~~(1)~~— Power purchase charges in the event of a default of covered power purchase agreements— and
- ~~(2)~~— Reserve fees.

Based on feedback from the State, this proposed amendment clearly establishes two separate accounts within the trust fund—the first for power purchase charges, and the second for reserve fees.

~~(b)~~— Moneys in the fund shall be held by the department in trust for the benefit of obligees of covered power purchase agreements to the extent of the amounts owed to such obligees.— until termination of the step-in agreement as described in section 269-B(d). The department's payments from the fund shall be made without appropriation or allotment— as provided in section 37-40.

This proposed amendment clarifies that the department will hold moneys in the fund in trust until termination of the step-in agreement.

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

This proposed amendment clarifies that only power purchase charges are considered revenues of the utility after termination of the step-in agreement. By contrast, reserve fees shall not be considered revenues of the utility after termination.

~~§ (d)~~ The department shall be under no obligation to make payment to any obligee in excess of the moneys in the fund. Any default or failure by the department to make payments pursuant to the terms of a step-in agreement under this part shall not result in any recourse by the electric utility or obligee to any funds of the State other than the revenues from power purchase charges and reserve fees collected and on deposit in the fund.

This proposed amendment, based in part on language from companion bill SB 1501 and on prior testimony from the State, establishes that the department's payment obligation

is limited only to moneys in the fund, and that there shall be no recourse to funds of the State other than the revenues from the power purchase charges and reserve fees that have been collected and are on deposit in the fund.

VI. § 269-E (Reserve account; establishment)

(a) ~~By August 1, 2025, the public utilities commission shall authorize utility-wide nonbypassable surcharges proposed by an electric utility, referred to as reserve fees., which shall be deposited into the reserve account, and which shall be pledged to secure and be applied to payment obligations under a step-in agreement to the extent that there is a shortfall in the amount of revenues from power purchase charges on deposit in the fund.~~ Reserve fees may be included in the purchased power adjustment clause on customer bills. ~~The department shall establish and maintain a separate account to accept and account for revenues from reserve fees as part of the fund established under section 269-D, and the~~ The electric utility shall promptly deposit all revenues collected from reserve fees into the ~~account.~~ utility reserve account. ~~Unless and until the step-in agreement terminates pursuant to section 269-B(d), the title to revenues from reserve fees shall be held in trust by the department for the benefit of the obligees. The electric utility shall not possess any title to the revenues from reserve fees, and shall not otherwise assign, sell, or transfer any title to, or any claim or right to, the revenues from reserve fees. The electric utility shall not access the reserve account or utilize the revenues deposited therein, except as provided under this part.~~ directed by the department pursuant to section 269-F(e).

These proposed amendments implement the following:

- (1) Based on feedback from the State, the proposed amendments establish that the surcharge for the reserve fees shall be utility-wide and nonbypassable.
- (2) Based on feedback from the State, the proposed amendments clarify that the reserve fees shall be deposited into the reserve account, and that the reserve account shall be pledged to secure and be applied to payment obligations if there is a shortfall in revenues from power purchase charges.
- (3) Consistent with the remainder of the statute, the proposed amendments clarify that the reserve fees shall be held in trust by the department for the benefit of obligees.
- (4) Based on feedback from the State, the proposed amendments establish that the utility shall not possess any title to the revenues from reserve fees.
- (5) Based on feedback from the State, the proposed amendments ensure that the utility cannot access the account or use those revenues within unless directed to do so as an agent of the department.

~~(b) — Reserve fees shall be collected and,~~
maintained, and if necessary, reinstated, to establish and
replenish 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.

The proposed amendments clarify that the reserve account shall be maintained at fifteen per cent of forecasted monthly power purchase costs, and replenished in the event there is a draw from the account or there are additional covered power purchase agreements.

~~(c) — If the step-in agreement terminates pursuant to section 269-B(d),~~ then by operation of law, any title to the revenues from reserve fees attributable to the covered power purchase agreement shall immediately cease to be held in trust,
reserve fees collected in connection with the covered power purchase agreement shall cease to be collected, and all moneys remaining in the fund attributable to the reserve fees shall be returned in full, together with any associated interest earned, to customers through a rate credit.

The proposed amendments clarify that title to reserve fees is divested from department in the event of termination of the step-in agreement. The moneys from such fees are then directly returned in full to customers through a rate credit.

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

~~§ (d)~~ The public utilities commission may require, in the order authorizing the surcharge, that if the electric utility fails to remit revenues from reserve fees, the public utilities commission, upon the application by the department, and without limiting any other remedies available to the department by reason of the failure, shall order the sequestration and payment to the department of the revenues from reserve fees. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric utility.

Based on feedback from the State, the proposed amendments delete the legislative finding with respect to the reasonable reserve requirement in article VII, section 13, clause 8, of the Hawaii Constitution, as that requirement is no longer applicable.

Further, based on feedback from the State, the proposed amendments provides a compliance mechanism enforceable by the commission to ensure that the utility remits revenues from reserve fees to the department.

VII. § 269-F (Electric utility; agent of the department)

(a) — To implement the requirements of this part, the department ~~may~~shall contract with an electric utility or its successor to act as an agent of the department to provide billing, collection, payment, management, and other related services. Under no circumstances shall the department be liable for any costs, expenses or other monetary relief and/or compensatory damages in connection with a breach of any agency agreement.

1. This proposed amendment, based on feedback from the IPPs, from "may" to "shall", requires the department to contract with the utility for agency services, given the background and experience of the utility in billing, collection, and payment services.
2. Based on feedback from the State, the proposed amendments provide that any breach of the agency agreement by the department shall not result in monetary relief or damages.

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

Based on feedback from the State, the proposed amendment removes a qualification on moneys held in trust by the utility pending transfer for the execution of the department's obligations.

(f) The department's contract with the electric utility for services pursuant to this section 269-F shall be exempt from chapter 103D."

Based on feedback from the IPPs, this proposed amendment ensures that agency contracts between the department and the utility need not adhere to the procurement requirements under chapter 103D.

A BILL FOR AN ACT

RELATING TO ENERGY.

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

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

— The procurement of replacement clean energy resources by a certain investor-owned electric utility and its electric

1 utility subsidiaries is ongoing in its Stage 3 request for
2 proposals and further anticipated in its first Integrated Grid
3 Planning request for proposals.— These requests for proposals
4 set forth energy plans that have been developed through
5 extensive engagement with local stakeholders and communities
6 and reviewed and approved by the public utilities
7 commission.— The legislature finds that successful
8 procurement of clean energy resources is in the public interest
9 and necessary to avoid significant detrimental reliability and
10 affordability impacts to electric utility customers.

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

18 — The legislature also finds that continued development
19 of clean energy resources requires adequate assurances that
20 payments for purchased power will be made to independent power
21 producers as and when due by the utility under power purchase
22 agreements.— The current sub—investment—grade status of a
23 certain investor-owned electric utility and its subsidiaries,
24 arising from the tragic events that occurred in the 2023 Maui
25 wildfires, has led independent power producers, and those who
26 would otherwise finance renewable energy projects, to raise
27 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
7 the interests of electric utility customers in the State.

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

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

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

15 — Therefore, the purpose of this Act is to:

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

24 — (2) — ~~Establish~~ Require the department of budget and
25 finance to establish a trust fund outside the state treasury,
26 that shall be capitalized by revenues from a surcharge
27 supporting a reserve account and, in the event of a default, by

1 revenues from power purchase charges, in each case associated
2 with covered power purchase agreements, for the fulfillment of
3 payment obligations arising from the power purchase agreement;

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

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

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

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

19 ~~_____~~ ~~§§~~ 269-A ~~_____~~ **Definitions.** ~~_____~~ As used in this part:

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

22 ~~_____~~ "Default" means the failure by ~~_____~~ an electric utility
23 to pay power purchase costs as and when due to an obligee under
24 a covered power purchase agreement, _____ after the expiration of any
25 applicable grace or cure periods and extensions
26 thereto. ~~_____~~ "Default" ~~does~~ shall not mean a bankruptcy filing by
27 an electric utility.

1 ~~_____~~ "Department" means the department of budget and
2 finance~~7_~~ or any successor by law.

3 ~~_____~~ "Electric utility" means a public utility that
4 produces, conveys, transmits, delivers, or furnishes electric
5 power.

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

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

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

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

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

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

24 ~~_____~~ "Obligee" means any user, owner, or operator of the
25 Hawaii electric system that is owed payment of power purchase
26 costs by ~~the~~an electric utility under a power purchase
27 agreement.

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

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

17 ~~_____~~ "Power purchase costs" means costs incurred by an
18 electric utility pursuant to the terms of a power purchase
19 agreement. ~~_____~~ ~~"Power purchase costs" includes~~ including without
20 limitation, costs such as termination payments payable by an
21 electric utility in connection with the termination of a power
22 purchase agreement as a result of a default by such electric
23 utility thereunder. "Power purchase costs" include, without
24 limitation, all categories of costs recoverable under the
25 energy cost recovery clause and the purchased power adjustment
26 clause under ~~its~~ their respective tariffs in effect on July 1,
27 2025.

1 ~~—"Purchased power adjustment clause"—~~ means the
2 provision, or other equivalent, in an electric utility's rate
3 schedules that allows the electric utility to recover expenses
4 and related taxes for non-energy costs of power purchased under
5 a power purchase agreement.

6 ~~—"Reserve account" refers to the account established~~
7 ~~within the fund pursuant to section 269-D(a) for deposit and~~
8 ~~accounting of revenues from reserve fees.~~

9 "Reserve fees" means the surcharges described in section
10 269-E(a).

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

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

24 ~~—"User, owner, or operator of the Hawaii electric~~
25 system" has the same meaning as in section 269-141.

26 ~~—§§ 269-B—~~ Step-in agreements.

1 (a) ~~—~~ The department shall enter into a step-in agreement
2 with an obligee that requires the department to make payments
3 for power purchase costs owed by an electric utility to the
4 obligee in the event of a default. ~~—~~; provided that before
5 entry into any agreement, the department may negotiate
6 reasonable terms based on due diligence, including through
7 communication with the prospective obligee, on the prospective
8 obligee and the step-in agreement. Pursuant to such step-in
9 agreement and upon the default, the department shall make
10 payments to the obligee for power purchase costs with moneys
11 ~~from~~ on deposit in the fund as and when due by the electric
12 utility under the covered power purchase agreement; provided
13 that any such step-in agreement shall provide that the
14 department's payment obligation thereunder shall be ~~solely~~
15 limited to the revenues from power purchase charges and reserve
16 fees collected in connection with ~~the~~ covered power purchase
17 agreements. ~~—~~ that are on deposit in the fund. Each step-in
18 agreement shall include a clause stating that neither the full
19 faith and credit of the State nor any other moneys of the State
20 will be pledged for any obligations pursuant to the terms of ~~a~~
21 ~~step-in agreement.~~ the step-in agreement and that in any
22 action concerning a failure by the department to comply with
23 the terms of the step-in agreement, the sole and exclusive
24 remedy available to an obligee and the electric utility against
25 the department shall be an order directing specific performance
26 of the step-in agreement and under no circumstances shall the
27 department be liable for any costs, expenses, or other monetary

1 relief and/or compensatory damages. An obligee of a covered
2 power purchase agreement shall have no claim or lien on any
3 moneys of the State, except for those revenues from the power
4 purchase charges and reserve fees ~~attributable to covered power~~
5 ~~purchase agreements~~ collected in connection with the covered
6 power purchase agreement and on deposit in the fund. An
7 obligee shall remain entitled to all payments for power
8 purchase costs owed under the covered power purchase agreement,
9 whether or not the revenues from power purchase charges
10 attributable to the covered power purchase agreement are timely
11 collected. Notwithstanding anything to the contrary in this
12 part, a step-in agreement shall also obligate the department to
13 pay claims of the obligee from moneys on deposit in the fund
14 arising out of termination of a power purchase agreement by the
15 electric utility under bankruptcy law.

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

1 ~~— (c) —~~ The payment obligation of the department under
2 a step-in agreement shall commence not later than two days
3 after the date of a notice ~~from~~ provided by the department to
4 the electric utility pursuant to section 269-C(a).

5 ~~— (d) —~~ The step-in agreement shall terminate when the
6 credit rating of the electric utility or its successor achieves
7 investment grade status or by express agreement of the obligee,
8 department, and electric utility. ~~Upon~~ Following the
9 termination of a step-in agreement, the department shall have
10 no obligation to the electric utility or the obligee upon a
11 default by the electric utility.

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

1 subsequent default by the electric utility solely from monies
2 on deposit in the fund; provided however, that no such election
3 by the electric utility is permitted if the department has made
4 payment for power purchase costs with moneys from the reserve
5 account, unless the electric utility fully replenishes the
6 reserve account for the moneys drawn from the reserve account
7 by the department for payment.

8 ~~— (f) —~~ The department may impose other conditions, and
9 may include other terms, in a step-in agreement that it deems
10 necessary to implement the requirements of this part; provided
11 that the conditions and terms shall not adversely affect the
12 obligation of the department to make payments for power
13 purchase costs owed by an electric utility to the obligee as
14 and when due in the event of a default as required by section
15 269-B(a) or otherwise be inconsistent with the covered power
16 purchase agreement.

17 ~~— (g) —~~ As ~~—~~ consideration for the department entering
18 into the step-~~—~~in agreement, the electric utility or its
19 successor shall enter into an agreement to assign and transfer
20 title to the revenues from power purchase charges ~~and reserve~~
21 ~~fees~~ attributable to the covered power purchase agreement to
22 the department to be held in trust for the benefit of the
23 obligees under the covered power purchase agreements to the
24 extent of the amounts owed to such obligees. ~~—~~ The assignment
25 and transfer of title to the revenues from power purchase
26 charges by the electric utility shall be made and remain for
27 the term of the step-in agreement free and clear of any prior

1 lien, pledge, security interest, or encumbrance of any kind,
2 and shall be exempt from section 269-19. The revenues from
3 power purchase charges and reserve fees shall not be subject to
4 appropriation for any other purpose. ~~The revenues, and~~ shall
5 be exempt from the requirements of chapters 36 and 38. ~~—~~ The
6 electric utility or its successor shall be and remain at all
7 times, even upon the occurrence and during the continuance of a
8 default by the electric utility or its successor, obligated to
9 bill and collect the power purchase charges and reserve fees
10 and manage the associated revenues as an agent for the
11 department to effectuate the purposes of this part.

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

1 ~~—(i)—~~ To meet the requirements of the State and the
2 public utilities commission as they pertain to electric
3 reliability, energy security, and energy diversification under
4 this chapter and any rules adopted pursuant thereto, the
5 electric utility shall ensure that it maintains sufficient
6 availability of electric energy and related products, to the
7 extent provided by an obligee in accordance with a covered
8 power purchase agreement.~~—~~ The public utilities commission
9 shall exercise its regulatory powers to ensure that the
10 electric utility complies with its obligations under the
11 covered power purchase agreement.

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

19 ~~—(1)—~~ Generate sufficient revenues from power
20 purchase charges to timely and fully pay amounts when owed
21 and due under covered power purchase agreements;

22 ~~—(2)—~~ Ensure that in no event shall revenues from
23 power purchase charges fall below the amounts owed and due
24 under covered power purchase agreements by a sum that
25 exceeds the amounts in the ~~power purchase costs~~ reserve
26 ~~fund~~ account established under section 269-E; and

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

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

16 ~~_____~~ (k) ~~_____~~ If ~~the~~ an obligee provides notice to the
17 department that the electric utility has failed~~ed~~ to timely file
18 any submission as described in subsection (j), the department
19 shall promptly file, or direct the electric utility to promptly
20 file pursuant to section 269-F(a), and the public utilities
21 commission shall allow to become effective, a substitute
22 submission as if the submission had been filed by the electric
23 utility under subsection (j). ~~_____~~ The electric utility shall
24 implement the power purchase charges in the substitute
25 submission from the department.

26 ~~_____~~ ~~§§~~ 269-C ~~_____~~ **Default of electric utility; successor**
27 **requirements.** ~~_____~~

(a) ~~If~~ After the obligee provides notice to the department of a default of a covered power purchase agreement, the department shall promptly provide the electric utility with a copy of such notice of ~~the~~ default. ~~Two~~ Two days after the electric utility receives the notice, the electric utility shall turn over all revenues from the power purchase charges ~~and reserve fees~~ arising from any covered power purchase agreements identified in the notice and associated reserve fees, regardless of when collected, then in its possession, and, subject to section 269-B(e), all future revenues from the power purchase charges and reserve fees thereafter collected to the fund ~~established pursuant to section 269-D(a).~~ These amounts shall include all revenues received by the electric utility after a default for such power purchase charges and reserve fees billed before the default. ~~The~~ The department shall use the revenues collected from the power purchase charges and reserve fees, ~~including on deposit in the revenues turned over,~~ fund only in the order as follows:

(1) ~~To~~ To pay power purchase costs pursuant to step-in agreements, subject to the appointment, authorization, and empowerment of the electric utility as an agent as described in section 269-F(e), ~~and for revenues in excess of amounts owed under covered power purchase agreements;~~ and

~~for revenues in excess of amounts owed under covered power purchase agreements,~~

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

~~—~~ (3) ~~—~~ — To implement a rate credit to customers.

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

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

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

~~—~~ (e) ~~—~~ — If the step-in agreement is terminated as described in section ~~—~~ — 269-B(d), then by operation of law, any title to the revenues from power purchase charges ~~and reserve fees~~ attributable to the covered power purchase agreement shall immediately cease to be held in trust and the electric utility

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

8 ~~§§ 269-D—~~**Power purchase costs trust fund.**~~—~~

9 (a) ~~—~~ There is established outside the state treasury the
10 power purchase costs trust fund to be administered by the
11 department. ~~—~~ The department shall establish and maintain two
12 separate accounts within the fund, the first account to be
13 utilized for the deposit and accounting of all revenue from
14 power purchase charges by the electric utility pursuant to
15 section 269-C(a), and the second separate account to be
16 utilized for the deposit and accounting of all revenue from
17 reserve fees by the electric utility pursuant to section 269-
18 E(a). The electric utility shall deposit into the applicable
19 account in the fund all revenues collected in connection with
20 covered power purchase agreements from~~÷~~

21 ~~—~~ (1) ~~—~~ Power purchase charges in the event of a
22 default of covered power purchase agreements~~÷~~ and

23 ~~—~~ (2) ~~—~~ Reserve fees.

24 ~~—~~ (b) ~~—~~ Moneys in the fund shall be held by the
25 department in trust for the benefit of obligees of covered
26 power purchase agreements to the extent of the amounts owed to
27 such obligees. ~~—~~ until termination of the step-in agreement as

1 described in section 269-B(d). The department's payments from
2 the fund shall be made without appropriation or allotment, as
3 provided in section 37-40.

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

12 ~~—§(d)~~ The department shall be under no obligation to
13 make payment to any obligee in excess of the moneys in the fund.
14 Any default or failure by the department to make payments
15 pursuant to the terms of a step-in agreement under this part
16 shall not result in any recourse by the electric utility or
17 obligee to any funds of the State other than the revenues from
18 power purchase charges and reserve fees collected and on deposit
19 in the fund.

20 § 269-E— **Reserve account; establishment.** ~~—~~

21 (a) ~~—~~ By August 1, 2025, the public utilities commission shall
22 authorize utility-wide nonbypassable surcharges proposed by an
23 electric utility, referred to as reserve fees. ~~—~~, which shall
24 be deposited into the reserve account, and which shall be
25 pledged to secure and be applied to payment obligations under a
26 step-in agreement to the extent that there is a shortfall in
27 the amount of revenues from power purchase charges on deposit

in the fund. Reserve fees may be included in the purchased power adjustment clause on customer bills. ~~The department shall establish and maintain a separate account to accept and account for revenues from reserve fees as part of the fund established under section 269-D, and the~~ The electric utility shall promptly deposit all revenues collected from reserve fees into the ~~account. The utility~~ reserve account. Unless and until the step-in agreement terminates pursuant to section 269-B(d), the title to revenues from reserve fees shall be held in trust by the department for the benefit of the obligees. The electric utility shall not possess any title to the revenues from reserve fees, and shall not otherwise assign, sell, or transfer any ~~title to, or any~~ claim or right to, the revenues from reserve fees. The electric utility shall not access the reserve account or utilize the revenues deposited therein, except as ~~provided under this part.~~ directed by the department pursuant to section 269-F(e).

~~(b)~~ (b) Reserve fees shall be collected ~~and,~~ maintained, and if necessary, reinstated, to establish and replenish 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.

~~(c)~~ (c) If the step-in agreement terminates pursuant to section ~~269-B(d),~~ then by operation of law, any title to the revenues from reserve fees attributable to the covered power

purchase agreement shall immediately cease to be held in trust,
reserve fees collected in connection with the covered power
purchase agreement shall cease to be collected, and all moneys
remaining in the fund attributable to the reserve fees shall be
returned in full, together with any associated interest earned,
to customers through a rate credit.

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

~~—~~ §(d) The public utilities commission may require, in
the order authorizing the surcharge, that if the electric
utility fails to remit revenues from reserve fees, the public
utilities commission, upon the application by the department,
and without limiting any other remedies available to the
department by reason of the failure, shall order the
sequestration and payment to the department of the revenues
from reserve fees. Any order shall remain in full force and
effect notwithstanding any bankruptcy, reorganization, or other
insolvency proceedings with respect to the electric utility.

§ 269-F— ~~Electric utility; agent of the department.~~

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

1 services. Under no circumstances shall the department be
2 liable for any costs, expenses or other monetary relief and/or
3 compensatory damages in connection with a breach of any agency
4 agreement.

5 ~~—— (b) —~~ At the request of the department, the public
6 utilities commission shall order an electric utility or its
7 successor to perform the duties pursuant to a contract under
8 subsection (a).

9 ~~—— (c) —~~ The act of serving as an agent to bill and to
10 collect the power purchase charges and reserve fees shall not
11 cause any electric utility to be subject to the laws that
12 regulate financial institutions, escrow depositories, or
13 collection agencies. ~~——~~ An electric utility shall not be
14 responsible for lending, underwriting, and credit
15 determinations in respect to these billing and collection
16 activities.

17 ~~—— (d) —~~ To the extent any revenues are received by an
18 electric utility pursuant to subsection (a) in the process of
19 collection, and pending their transfer to the fund pursuant to
20 section 269-D(a), those moneys ~~necessary to timely and fully~~
21 ~~pay amounts when owed and due under covered power purchase~~
22 ~~agreements~~ shall be held in trust for the department's exercise
23 of its obligations pursuant to this part.

24 ~~—— (e) —~~ To implement the requirements of this part, the
25 director of finance may appoint, authorize, and empower the
26 electric utility, as agent for and on behalf of the department,
27 to manage and pay out moneys, including from the fund, for

1 fulfillment of payment obligations of the department arising
2 from covered power purchase agreements.—_The appointment
3 shall terminate when the step-in agreement is terminated as
4 described in section 269-B(d~~).~~).

5 ~~—~~(f) The department's contract with the electric
6 utility for services pursuant to this section 269-F shall be
7 exempt from chapter 103D."

8 SECTION 3.—_If any provision of this Act, or the
9 application thereof to any person or circumstance, is held
10 invalid, the invalidity does not affect other provisions or
11 applications of the Act that can be given effect without the
12 invalid provision or application, and to this end the
13 provisions of this Act are severable.

14 ~~—~~SECTION 4.—_In codifying the new sections added by
15 section 2 of this Act, the revisor of statutes shall substitute
16 appropriate section numbers for the letters used in designating
17 the new sections in this Act.

18 ~~—~~SECTION 5.—_This Act shall take effect ~~on July 1,~~
19 ~~3000~~upon its approval.

20 —

21 INTRODUCED BY:

22 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.



Email: communications@ulupono.com

SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION
& ENERGY AND INTERGOVERNMENTAL AFFAIRS
Thursday, March 20, 2025 — 9:30 a.m.

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

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

My name is Micah Munekata, and I am the Director of Government Affairs 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, 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

Investing in a Sustainable Hawai'i

replacement resources cannot be overstated. A step-in agreement, such as the one 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,

Micah Munekata
Director of Government Affairs



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Ameresco.com

TESTIMONY TO THE
ON ENERGY AND INTERGOVERNMENTAL AFFAIRS AND COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

9:30 AM, March 20, 2025
Conference Room 229 & Via Videoconference

HB 974 HD1

Chair Wakai, Chair Keohokalole, Vice Chair Chang, Vice Chair Fukunaga, and Members of the Committees,

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 and establishes the Power Purchase Costs Trust Fund.

The bill is essential to ensuring the financing and construction of the critically needed renewable energy projects. 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 storage project in 'Ewa.

We currently have three additional large-scale renewable energy projects in development on O'ahu and Maui – a firm energy 99MW Pu'uloa Energy and 6 MW / 30MWh Pu'uloa Solar both on Oahu and a firm energy 40MW Ūkiu Energy on Maui – the completion of these projects hinges on successful financing, which in turn depends on the passage of this bill.

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 with additional capacity to be placed in service by 2033, which is critical to grid reliability and resilience. Proposals were submitted to Hawaiian Electric in April of 2023 with preset rates, and projects were awarded in November 2023. Between the time that the proposals were submitted and awarded, however, Hawaiian Electric's credit rating was 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. Specifically, lenders and equity investors are reluctant to invest

in these projects because the fear of what would happen in the event of a Hawaiian Electric bankruptcy – and during a bankruptcy, payments that are due to the IPPs by Hawaiian Electric would be disrupted for several months, or potentially longer, which could in turn lead to IPPs defaulting on their payment obligations to lenders. In other cases, lenders are seeking to charge higher interest rates to IPPs to account for this additional risk, however, the proposed rates submitted in April 2023 are not adjustable, which results in non-viable projects.

Several IPP projects have already withdrawn from the Stage 3 procurement. Additionally, many planned Stage 2 projects have also terminated or been delayed. It is in the State's interest to ensure that the remaining and future 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 future renewable energy 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. There are no other large renewable projects "in the works" beyond the Stage 3 projects, potentially leaving the State with energy resource shortfall.

Benefits of HB 974 HD1

As currently drafted, HB 974 HD1 will help ensure the financing and construction of future renewable projects, by allowing the State to enter into step-in agreements with the IPPs and make payments required under the PUC approved PPAs. These step-in-agreements will instill greater lender confidence that the payments will continue to be made even in the event of a Hawaiian Electric bankruptcy, making the projects financeable.

To effectively mitigate financial risk of the lenders, participation in step-in agreements must be mandatory, not optional or discretionary. For this legislation to be effective in preserving the ability of these projects to move forward, these trust funds are necessary to be in existence in advance and funded prior to any bankruptcy.

Additionally, setting up a separate reserve fund that exists and is funded prior to any Hawaiian Electric bankruptcy will be critical to ensuring the effectiveness of this legislation. Because the IPP contracts are approved by the Public Utilities Commission for the benefit of the ratepayers and authorizes the recovery of the full costs of the projects from the ratepayers, the reserve fund is an interim stopgap, covering shortfalls in cost recovery timing and forecast reconciliation and can also be used to credit ratepayers. Since these step-in-agreements are not backed by the full faith and credit of the State, lenders will need certainty that there are funds available to support the step-in-agreement payments in the event of bankruptcy.

The companion to this Bill, SB 1501 SD2 was previously heard by three Senate Committees and resulted in thoughtful amendments that were the result of feedback and collaboration by many of the stakeholders. We request the Committees consider them for this bill.

Ameresco is aware that various parties have suggested further amendments and defers to the State and Hawaiian Electric on those refinements.

Thank you for the opportunity to provide this testimony in support of HB 974 HD1.



Testimony to the Senate Committee on Energy and Intergovernmental Affairs
Senator Glenn Wakai, Chair
Senator Stanley Chang, Vice Chair

Testimony to the Senate Committee on Commerce and Consumer Protection
Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

Thursday, March 20, 2025, at 9:30AM
Conference Room 229 & Videoconference

RE: HB974 HD1 Relating to Energy

Aloha e Chairs Wakai, Keohokalole and Members of the Committees:

My name is Sherry Menor, President and CEO of the Chamber of Commerce Hawaii ("The Chamber"). The Chamber supports House Bill 974 House Draft 1 (HB974 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.

HB974 HD1 aligns with our 2030 Blueprint for Hawaii: An Economic Action Plan, specifically under the policy pillar for Business Services. This bill promotes policies that drive economic growth, enhance workforce opportunities, and improve the quality of life for Hawaii's residents.

There is an urgent need to secure affordable and reliable clean energy resources as Hawaii faces the retirement of aging power plants and increasing pressure to transition to renewable energy. The legislature's findings emphasize that many existing generating units will soon become obsolete or fail to meet environmental standards, jeopardizing both the reliability and affordability of the state's electric supply. To counteract these risks, the measure mandates the procurement of new clean energy resources through competitive proposals and extensive stakeholder engagement, ensuring that the transition away from fossil fuels is both timely and cost-effective. In doing so, it supports the state's long-term goals of achieving 100 percent net electricity from renewable sources and a zero emissions economy by 2045.

To further safeguard the development of renewable energy, the legislation establishes a robust framework of step-in agreements where the Department of Budget and Finance agrees to make payments to independent power producers if an electric utility defaults on its power purchase agreements. This framework includes the creation of a trust fund and reserve account, and it empowers the electric utility to manage billing and revenue collection to ensure continuity of payments. The Chamber supports this measure because it provides the financial assurances necessary to protect renewable energy investments, thereby maintaining energy reliability and driving Hawaii's sustainable future.



Chamber *of* Commerce HAWAII



The Chamber of Commerce Hawaii is the state's leading business advocacy organization, dedicated to improving Hawaii's economy and securing Hawaii's future for growth and opportunity. Our mission is to foster a vibrant economic climate. As such, we support initiatives and policies that align with the 2030 Blueprint for Hawaii that create opportunities to strengthen overall competitiveness, improve the quantity and skills of available workforce, diversify the economy, and build greater local wealth.

We respectfully ask to pass House Bill 974 House Draft 1. Thank you for the opportunity to testify.

House Bill 974 HD 1 – Relating to Renewable Energy
TESTIMONY

Hawai'i State Senate
Senate Committee on Energy and Intergovernmental Affairs
Senate Committee on Commerce and Consumer Protection
Thursday, March 20, 2025
9:30 a.m.

Aloha Chair Wakai, Chair Keohokalole, Vice Chair Fukunaga, Vice Chair Chang and Members of the Joint Committees,

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 and 37 MW of Stage 2 projects. Additionally, AES Hawai'i has two Stage 3 projects which recently signed PPAs and were submitted to the PUC for review and approval.

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"). The bill is essential for ensuring that IPPs, like AES Hawai'i, can secure competitive financing terms for renewable energy projects under HECO's Stage 3 RFP and IGP RFP.

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 have PPAs with HECO for utility-scale renewable energy projects that these PPAs are supported by the proposed step-in agreements and do not present a default risk. Furthermore, it is critical that the department of budget and finance enter into the proposed step-in agreements 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 RFP and IGP RFP.

The proposed step-in agreement with the department of budget and finance will mitigate the default risk associated with HECO's non-investment grade status and provides important assurances to financiers, enabling the financing of utility-scale renewable energy projects. Without these assurances, financing could become unavailable, limited, or extremely expensive, leading to project cancellations, major price increases for HECO and ratepayers and significant delays in the state's transition to 100% renewable energy. It is important to note this bill is primarily intended to help ratepayers mitigate financial risk of rising electricity costs if renewable energy projects with HECO in Hawai'i cannot remain viable through financing.

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 supports the package of amendments submitted by HECO which incorporates requested changes from IPPs, including AES. In addition, AES Hawai'i respectfully requests the following amendments that are intended to help ensure the bill can be implemented as intended 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.

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. Pursuant to such step-in agreement and upon the default, the department shall make payments to the obligee for power purchase costs with moneys from the fund as and when due by the electric utility under the covered power purchase agreement; provided that any such step-in agreement shall provide that the department's payment obligation thereunder shall be solely limited to the revenues from power purchase charges and reserve fees collected in connection with the covered power purchase agreements. Each step-in agreement shall include a clause stating that neither the full faith and credit of the State nor any other moneys of the State will be pledged for any obligations pursuant to the terms of a step-in agreement. 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.

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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-B(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. Any vesting of revenues to the electric utility at the time of payment may be made without appropriation by the legislature or allotment. The department shall not otherwise assign, sell, or transfer any title to, or any claim or right to, the revenues from power purchase charges or reserve fees.

5. **Sections 269-F (a), (e) and (f) Electric Utility; agent of the department:** The current bill states that the Department may contract with the electric utility to act as an agent on the State's behalf to provide billing, collection, payment, management and other related services. AES believes that HECO is best positioned to perform these services so we agree with HECO that "may" should be replaced with "shall" in the first line. In addition, and consistent with that proposed amendment, to avoid the need for a lengthy procurement process, we propose to add a subsection (f) with language that would exempt contracts with HECO under Sections 269-F(a) and (e) from Chapter 103D, the State Procurement Code.

- (a) To implement the requirements of this part, the department ~~may~~shall contract with an electric utility or its successor to act as an agent of the department to provide billing, collection, payment, management, and other related services.
- (e) To implement the requirements of this part, the director of finance ~~may~~shall appoint, authorize, and empower the electric utility, as agent for and on behalf of the department, to manage and pay out moneys, including from the fund, for fulfillment of payment obligations of the department arising from covered power purchase

agreements. The appointment shall terminate when the step-in agreement is terminated as described in section 269-B(d)."

- (f) The Department's contracts with the electric utility for such services under Sections 269-F(a) and (e) is exempt from Chapter 103D HRS.

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.

Eliza Talbot Manchester

Manager Government and Regulatory Affairs
AES Hawai'i

March 20, 2025

TO: HONORABLE GLENN WAKAI, CHAIR, HONORABLE STANLEY CHANG, VICE CHAIR, COMMITTEE ON ENERGY AND INTERGOVERNMENTAL AFFAIRS. HONORABLE JARRETT KEOHOKALOLE, CHAIR, HONORABLE CAROL FUKUNAGA, VICE CHAIR, COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

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, March 20, 2025
TIME: 9:30 a.m.
PLACE: Capitol Room 229

Dear Chair Wakai, Vice Chair Chang, Chair Keohokalole, Vice Chair Fukunaga 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.

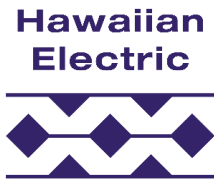
GCA **supports the intent** of H.B. 974 HD1, which requires the Department of Budget and Finance to enter into step-in agreements for payment obligations arising under certain power purchase agreements. Establishes the Power Purchase Costs Trust Fund. Establishes that revenues from on-bill charges for 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 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



CATHOLIC CHARITIES HAWAII



SENATE COMMITTEE ON ENERGY AND INTERGOVERNMENTAL AFFAIRS
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

March 20, 2025, 9:30a
Room 229 & Videoconference

Testimony in strong support of HB 974 HD1

Aloha Chairs Wakai and Keohokalole, Vice Chairs Chang and Fukunaga, and members of the committees:

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:

- AES Hawai'i
- aio
- Blue Planet Foundation
- Bowers + Kubota
- Catholic Charities Hawaii
- Chaminade University
- County of Kaua'i
- Elemental Impact
- Hawaiian Electric
- Hua Nani Partners
- Manoa Valley Theatre
- PAR Hawaii
- Sun Noodle
- Young Brothers
- Zephyr Insurance



**SENATE COMMITTEE ON ENERGY AND INTERGOVERNMENTAL AFFAIRS
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

March 20, 2025, 9:30 A.M.
Conference Room 229 and videoconference

TESTIMONY IN STRONG SUPPORT OF HB 974 HD1

Aloha Chairs Wakai and Keohokalole, Vice Chairs Chang and Fukunaga, and members of the committees:

Blue Planet Foundation **strongly supports HB 974**, a critical measure to ensure the continued financing and development of affordable clean energy projects in Hawai'i. This bill offers a timely, necessary, and forward-thinking mechanism—step-in agreements and a dedicated Power Purchase Costs Trust Fund—to provide assurances to independent power producers (IPPs) and their lenders amid utility credit concerns, ultimately protecting Hawai'i's energy future and ratepayers.

Proposed amendment: *Blue Planet believes that community-based renewable energy projects should be included along with IPPs to qualify for the step-in agreement and trust fund.*

Blue Planet Foundation is a Honolulu-based 501(c)(3) committed to helping Hawai'i cut its dangerous carbon emissions and avoid the worst impacts of climate change. We leverage the power of locally driven policy change and awareness to create momentum and inspire broader societal shifts to protect our climate in Hawai'i and beyond.

Hawai'i is at a pivotal juncture. With aging fossil fuel plants approaching retirement and new utility-scale renewable energy projects in development under Hawaiian Electric's Stage 3 and Integrated Grid Plan procurements, it is essential that financing for these projects remains viable. Unfortunately, Hawaiian Electric's current sub-investment-grade credit rating—largely resulting from the tragic Maui wildfires—has created a major financing barrier. Lenders now require higher interest rates or impose more restrictive terms, leading to higher power prices or project cancellations.

House Bill 974 addresses this challenge head-on by creating a mechanism for the Department of Budget and Finance to "step in" and make payments to IPPs in the event of a utility default. This limited and clearly defined credit backstop helps reassure financiers without putting general taxpayer funds at risk. Importantly:

info@blueplanetfoundation.org

55 Merchant Street 17th Floor • Honolulu, Hawai'i 96813 • 808-954-6161 • blueplanetfoundation.org

- The proposed trust fund will be capitalized by existing ratepayer revenues already collected under on-bill charges, not general fund appropriations.
- Step-in agreements do not constitute contingent liabilities under the State Constitution.
- The bill ensures that if such a mechanism is ever triggered, revenues will be available to maintain uninterrupted payments and energy delivery.
- A reserve fund component, while modest in cost to ratepayers, further strengthens the mechanism's reliability.

It's critical to note that this measure is ultimately about ensuring that ratepayers continue to benefit from competitively priced renewable energy that would otherwise be jeopardized by external credit market forces. Without this bill, project developers may withdraw or increase their PPA prices significantly—outcomes that would burden families and businesses across Hawai'i.

Blue Planet appreciates the Legislatures proactive leadership on this measure. House Bill 974 supports critical climate, energy security, and economic goals by enabling the timely buildout of clean energy infrastructure. We urge the Committee to advance this measure and help secure Hawai'i's clean energy future.

Thank you for the opportunity to provide testimony.

HB-974-HD-1

Submitted on: 3/18/2025 3:03:04 PM

Testimony for EIG on 3/20/2025 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Frank Schultz	Individual	Oppose	Written Testimony Only

Comments:

I oppose this initiative.

LATE



**TESTIMONY TO THE COMMITTEE ON ENERGY & INTERGOVERNMENTAL AFFAIRS AND
COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

9:30 AM, March 20, 2025

Conference Room 229 & Via Videoconference

HB 974 HD1

Chair Wakai, Chair Keohokalole, Vice Chair Chang, Vice Chair Fukunaga, and Members of the Committees,

Nexamp supports HB 974 HD1 and offers comments, which would require that the Department of Budget and Finance enter into step-in agreements that provide surety for payment obligations to developers arising under certain power purchase agreements with HECO.

Nexamp is the provider of Community Based Renewable Energy (CBRE) projects benefitting Hawaii's Low-To-Moderate-Income (LMI) ratepayers. Nexamp has been selected to deliver four projects on Hawaii Island and Oahu, serving over three thousand LMI households. Because the Nexamp Hawaii projects are designated to benefit the economically disadvantaged, these projects are extremely important and in the public interest.

However, these and future CBRE projects are at risk due to the utility's financial status. The ability to finance these projects requires the same financial treatment as utility scale Stage 3 projects and Integrated Grid Planning (IGP) projects as described in HB 974 HD1. The current version of this bill prevents CBRE projects from participating. We ask the Committees to consider amendments to HB 974 HD1 that confirm the application of this critical framework to CBRE Power Purchase Agreements just as they are applied to other renewable Power Purchase Agreements in Hawaii. It is critical that the proposed legislation apply to any renewable projects that meet the definition of "covered power purchase agreement" as provided in legislation to maximize the provision of affordable rates to the residents and businesses of Hawaii, especially to the LMI ratepayers.

Thank you for the opportunity to testify,

A handwritten signature in black ink, appearing to read "Brad Albert".

Brad Albert

Nexamp Director of Business Development

Commented [KS1]: Can we say "why" CBRE projects are not included? Is it arbitrary? Oversight?