



**WRITTEN 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, S.D. 1, RELATING TO ENERGY.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Friday, March 28, 2025

TIME: 10:02 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Randall S. Nishiyama,
Deputy Attorney General, at (808) 586-1267)

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General provides the following comments and offers some proposed amendments regarding this bill.

This bill:

1. Requires the Department of Budget and Finance (B&F) to enter into step-in agreements for payment obligations arising under certain power purchase agreements.
2. Establishes the Power Purchase Costs Trust Fund (Trust Fund).
3. Establishes that money collected from on-bill charges for power purchase agreements and money received from a surcharge supporting a reserve account that are deposited in the Trust Fund shall be held in trust by the State, and that independent power producers shall hold a beneficial interest in the moneys to the extent of the amounts owed under the covered power purchase agreements.
4. Appoints, authorizes, and empowers an electric utility to serve as the billing, collection, and payment agent of B&F in the service of performing step-in agreements.

This bill seeks to have B&F, 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, 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 Trust Fund to deposit moneys received from ratepayers.

The discussion below summarizes some of the proposed amendments suggested for this bill in order to minimize any adverse impacts to the State and B&F.

1. Payment Calculations: The proposed amendments seek to ensure that the State and B&F are not responsible for calculating, verifying, or questioning any payment amounts that B&F is required to make pursuant to a step-in agreement.

2. Due Diligence: We request that the bill be amended to provide that B&F shall enter into a step-in agreement with an IPP only after receiving satisfactory results (as determined by B&F in its sole discretion) from a due diligence investigation by B&F of an IPP and the proposed step-in agreement.

3. Limitation on the Use of Moneys in the Reserve Account: The proposed amendments seek to ensure that any revenues collected by an electric utility from the surcharge are directly transferred by the electric utility for deposit into the reserve account established in the Trust Fund and are pledged to secure the repayment of payment obligations under a covered power purchase agreement. The proposed amendments will ensure that an electric utility cannot use the reserve fees as an additional revenue source. We have provided that the revenues from the surcharge can only be used to pay obligees pursuant to a step-in agreement and to pay incremental administrative costs of B&F and cannot be used for any incremental administrative costs incurred by an electric utility.

4. Clarifying Amendments: We request that the following clarifying amendments be made to the bill:

Section 1:

Page 1, line 14, through page 2, line 5:

"The procurement or purchase of energy from 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[~~and other proposals~~]. These requests for proposals [will] 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." See page 1, line 14, through page 2, line 5.

Page 3, line 13, through page 4, line 3:

"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]~~ an independent power producer after a failure by ~~[an]~~ the electric utility to make required payments pursuant to the terms of ~~[the]~~ a power purchase agreement. The department of budget and finance's obligation to make payments pursuant to the terms of a step-in agreement is limited to the ~~[moneys]~~ 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 ~~[a]~~ the power purchase costs trust fund[.] established by the department of budget and finance." See page 3, line 13, through page 4, line 3.

Page 4, lines 13-16:

"Prior to a payment default by the electric utility[.] under a covered power purchase agreement, the electric utility will be authorized to utilize moneys from power purchase charges to discharge its obligations to pay independent power producers for electric energy and related products." See page 4, lines 13-16.

Page 5, line 2, through page 6, line 7:

"(1) Require the department of budget and finance, after receipt of satisfactory results (as determined by the department of budget and finance) from a due diligence investigation of that independent power producer and the

proposed step-in agreement, 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 to ~~[the independent power producer]~~ that independent power producer from revenues received from power purchase charges and reserve fees after a failure by the electric utility to make required payments pursuant to the terms of a power purchase agreement;

- (2) Establish a trust fund outside the state treasury that shall be capitalized by money from a surcharge supporting a reserve account within the trust fund and, in the event of a default~~[-]~~ by the electric utility of its payment obligations under one or more covered power purchase agreements, by money received from the power purchase charges~~[-in each case associated with covered power purchase agreements-]~~ related to the defaulted covered power purchase agreements, for the fulfillment of payment obligations arising ~~[from the]~~ under the covered power purchase agreements;
- (3) Establish that money collected from on-bill power purchase charges associated with covered power purchase agreements and money from a surcharge supporting a reserve account that are deposited in the power purchase costs trust fund shall be held in trust by the ~~[State,]~~ department of budget and finance, and that independent power producers shall hold a beneficial interest in the moneys to the extent of the amounts owed to ~~[such]~~ each independent power producer under the related covered power purchase agreement; and
- (4) Appoint, authorize, and empower ~~[an]~~ the electric utility to serve as the billing, collection, and payment agent of the department of budget and finance to implement the requirements of this Act." See page 5, line 2, through page 6, line 7.

Section 269-A – Definitions:

""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." See page 7, lines 5-9.

""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." See page 8, lines 6-12.

""Power purchase costs" includes, without limitation, all categories of costs recoverable under the energy cost recovery clause and the purchased power adjustment clause under their respective tariffs[;] in effect on July 1, 2025." See page 9, lines 3-7.

""Reserve account" means the account established within the fund pursuant to section 269-D(a) for deposit and accounting of revenues from reserve fees." See page 9.

""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[;] by the electric utility, as described in section 269-B(a); provided that the department's payment obligation under the step-in agreement is limited to the ~~[moneys]~~ revenues from power purchase charges collected in connection with the covered power purchase agreement and reserve fees ~~[collected in connection with the covered power purchase agreements and]~~ that are on deposit in the fund[;] provided further that in all circumstances under which the department is required to make payments pursuant to a step-in agreement from moneys on deposit in the fund, the department shall conclusively rely and shall be protected in acting or refraining from acting upon the written direction of an obligee in the determination of the amounts owed to an obligee. Notwithstanding anything herein

to the contrary, the department shall not be bound to make any independent calculation, verification or investigation into the facts or matters stated in any written direction of an obligee." See page 9, line 19, through page 10, line 6.

Section 269-B – Step-in agreements, page 10, line 9, through page 18, line 14:

"(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]~~ the obligee and the proposed step-in agreement. The step-in agreement shall require the department to make payments for power purchase costs owed by an electric utility to the obligee in the event of a default under the related power purchase agreement;
~~provided that before entering into any step-in agreement, the department shall conduct due diligence on the obligee, including through communication with the prospective obligee, within thirty days of the effective date of this Act].~~ Pursuant to the step-in agreement and upon ~~[the]~~ a default by the electric utility under the covered power purchase agreement related to the step-in agreement, the department shall make payments to the obligee for power purchase costs with ~~[moneys]~~ revenues received from power purchase charges from the covered power purchase agreement related to the step-in agreement and reserve fees that are on deposit in the fund as and when due by the electric utility under the related covered power purchase agreement; provided that any step-in agreement entered into by the department shall provide that the department's payment obligation thereunder shall be limited to the ~~[moneys]~~ revenues received from power purchase charges from the covered power purchase agreement related to the step-in agreement and reserve fees ~~[collected in connection with 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 ~~[the]~~ a step-in agreement and that in any action concerning a failure by the department to comply with the terms of ~~[the]~~ a step-in agreement, the sole and exclusive remedy available to an obligee and the electric utility under the step-in agreement against the department shall be an order directing specific performance by the department of the

step-in agreement; and that under no circumstances shall the department be liable for any costs, expenses, other monetary relief, or compensatory damages for a failure to comply with 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. An obligee of a covered power purchase agreement shall only have a claim or lien on [except for] those revenues from [the] power purchase charges and reserve fees [attributable to the covered power purchase agreement] that are transferred by the electric utility and on deposit in the fund. An obligee shall remain entitled to all payments for power purchase costs owed under [the] its covered power purchase agreement, whether or not the moneys from power purchase charges attributable to [the] its 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] an obligee from [moneys] revenues received from power purchase charges and reserve fees on deposit in the fund arising out of a termination of [a] the covered power purchase agreement by the electric utility under bankruptcy law. In determining any amounts owed, the department shall conclusively rely on and shall be protected in acting or refraining from acting upon the written direction of an obligee in the determination of the amounts owed. Notwithstanding anything herein to the contrary, the department shall not be bound to make any independent calculation, verification or investigation into the facts or matters stated in any written direction of an obligee.

(b) The department shall enter into a step-in agreement ~~[for each covered]~~ only if a power purchase agreement[.—The] 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. Upon satisfaction of the due diligence provisions set forth in subsection (a), the department shall enter into a step-in agreement related to a power purchase agreement when the power purchase agreement is executed, or if 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 given by the department to the electric utility pursuant to section 269-C(a).

(d) ~~[The]~~ A step-in agreement shall terminate when the credit rating of the electric utility or its successor achieves investment grade status or may be terminated by express agreement of the obligee, department, and electric utility. Following the termination of a step-in agreement, the department shall have no obligation to the electric utility or the obligee upon a continuing or future default by the electric utility~~[-]~~ under the related power purchase agreement.

(e) Following a default of a covered power purchase agreement and any payment by the department from 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 related to the defaulted covered power purchase agreement 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 revenues ~~[representing moneys]~~ received from power purchase charges ~~[collected]~~ in connection with the defaulted covered power purchase ~~[agreement]~~ agreements to the department for deposit in the fund as described in section 269-C(a), and may use the revenues received from power purchase charges related to the defaulted covered power purchase agreement through the vesting of title in the electric utility as described in subsection (h); provided that ~~[the]~~ any election by the electric utility to continue making payments shall not terminate the step-in agreement ~~[which]~~ that is related to the defaulted covered power purchase agreement and the related step-in agreement shall remain in effect until terminated pursuant to subsection (d), and the department shall remain obligated to pay the obligee of the defaulted covered power purchase agreements upon a subsequent default by the electric utility solely from ~~[moneys]~~ revenues on deposit in the fund; provided further that no ~~[such]~~ election by the electric utility shall be permitted if the department has made payment for any power purchase costs with moneys from the reserve ~~[fees-]~~ account.

(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[;] under the step-in agreement, but only to the extent that there are moneys in the fund, for power purchase costs owed by an electric utility to ~~[the]~~ an obligee under a covered power purchase agreement related to the step-in agreement as and when due in the event of a default as required by section 269-B(a) or otherwise be inconsistent with the related 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 the department to be held in trust for the benefit of the obligee under the covered power purchase agreement to the extent of the amounts owed to the obligee. The assignment and transfer of title to the revenues from the 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 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 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]~~ pursuant to 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 electric utility or its successor is made to the obligee. Any

vesting of [~~moneys~~] revenues 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, other than as permitted pursuant to section 269-C(a), 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 [~~pertaining~~] 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 may exercise its regulatory powers to ensure that the electric utility complies with its obligations under [~~the~~] a 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 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:

- (1) Generate sufficient [~~moneys~~] 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 [~~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 reserve 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, prior to a default the electric utility may

retain revenues collected from power purchase charges in excess of amounts owed and due under ~~[the]~~ a covered power purchase agreement. Any moneys in the reserve account established under the fund shall remain with the department~~[-]~~ at all times, subject to section 269-C(a). 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]~~ all step-in ~~[agreement]~~ agreements as provided in subsection (d).

~~[(k) If an obligee provides notice to the department that the electric utility has failed to timely file any submission as described in subsection (j), the department shall promptly file, or direct the electric utility to file, pursuant to section 269 F(a), and the public utilities commission shall allow to become effective, a substitute filing as if the filing had been submitted by the electric utility under subsection (j). The electric utility shall implement the power purchase charges in the substitute filing from the department.]~~ See page 10, line 9, through page 18, line 14.

Section 269-C -Default of electric utility; successor requirements, page 18, line 16, through page 21, line 9:

"(a) ~~[If the]~~ After an 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 the notice ~~[of the default]~~. One day after the electric utility receives the notice, the electric utility shall transfer all revenues from the power purchase charges arising from any covered power purchase agreement identified in the notice and 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 arising from the covered power purchase agreement identified in the notice and reserve fees thereafter collected to the fund established pursuant to section 269-D(a). These amounts shall include all revenues from power purchase charges and reserve fees received by the electric utility after a default for the power purchase charges and reserve fees billed before the default. ~~[The]~~ Following a default, the department shall use the revenues collected from the power purchase charges and reserve fees on deposit in the 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];~~ provided however that for purposes of complying with the requirements of this part the department shall conclusively rely on and shall be protected in acting or refraining from acting upon the written direction of an obligee in the determination of the amounts owed to an obligee. Notwithstanding anything herein to the contrary, the department shall not be bound to make any independent calculation, verification, or investigation into the facts or matters stated in any written direction of an obligee;
 - (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]~~ obligations upon a default set forth in section 269-B(g) ~~[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]~~ a step-in agreement is terminated as described in section 269-B(d), then by operation of law, any title to the revenues related to power purchase charges attributable to the related 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 related to power purchase charges~~[-]~~ attributable to the related covered power purchase agreement, and the obligation of the electric utility or its successor to bill and collect the power purchase charges and reserve fees for the covered power purchase agreement as an agent for the department, and, if applicable, to remit the collected revenues for the covered power purchase agreement to the fund, shall terminate." See page 18, line 16, through page 21, line 9.

Section 269-D – Power purchase costs trust fund, page 21, line 10, through page 23, line 9:

"(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 revenues received from power purchase charges transferred by the electric utility, and the second account to be utilized for the deposit of revenues received from reserve fees transferred by the electric utility. The electric utility shall 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]~~ following a default of a covered power purchase agreement; 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 the obligees of covered power purchase agreements to the extent of the amounts owed to the obligees. The department's payments from the fund shall be made without appropriation or allotment, as provided in section 37-40.

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

the electric utility or its successor the remainder of any [~~moneys~~] revenues in the fund attributable to power purchase charges[.] associated with the terminated covered power purchase agreement covered by the step-in agreement, which shall be considered moneys of the electric utility or its successor.

(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 an obligee to any funds of the State. An obligee of a covered power purchase agreement shall only have the benefit of [~~moneys~~] revenues derived from power purchase charges and the reserve fees 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 by the department of the step-in agreement and under no circumstances shall the department be liable for any costs, expenses, any monetary relief, or compensatory damages[.] for a failure to comply with the terms of a step-in agreement." See page 21, line 10, through page 23, line 9.

Section 269-E – Reserve account; establishment, page 23, line 10, through page 25, line 11:

"(a) By August 1, 2025, the public utilities commission may create a utility-wide nonbypassable surcharge, referred to as reserve fees, which shall be deposited into an account within the fund 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 moneys received from power purchase charges on deposit in the fund. Reserve fees shall be collected in full by the electric utility or its successors, as collection agents for the department, through a surcharge that is separate and apart from the electric utility's rates. The department shall establish and maintain a separate account within the fund to accept and account for revenues from reserve fees, and the electric utility shall, within one day of receipt, transfer all revenues collected from the surcharge related to the reserve fees directly to the department for

deposit into the 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 from the reserve fees 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, that, if a default occurs by the electric utility in remittance of the reserve ~~[fee]~~ fees collected, 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-]~~ fees. 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, and if necessary, reinstated, to establish and, if necessary, 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 by the department of the reserve account ~~[and any applicable taxes and fees]~~.

(c) If ~~[the]~~ a step-in agreement terminates pursuant to section 269-B(d), reserve fees collected in connection with the related covered power purchase agreement shall cease to be collected. Upon the termination of all step-in agreements ~~[and]~~ all moneys remaining in the ~~[fund attributable to the reserve fees]~~ reserve account shall be returned in full, together with any associated interest earned, to customers through a rate credit." See page 23, line 10, through page 25, line 11.

Section 269-F – Electric utility; agent of the department, page 25, line 12, through page 27, line 7:

"(a) To implement the requirements of this part, the department may contract with ~~[an]~~ the electric utility or its successor to act as an agent of the department to provide billing, collection, payment, and other related services. In any action concerning a breach by the department of ~~[the]~~ an agency agreement~~[-]~~ entered into in connection

with the services, the sole remedy available to an electric utility against the department shall be an order directing specific performance by the department of the agency agreement. Under no circumstances shall the department be liable for any costs, expenses, other monetary relief, or compensatory damages in connection with a breach of any agency agreement.

(b) At the request of the department, the public utilities commission may order ~~[an]~~ the 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]~~ the electric utility to be subject to the laws that regulate financial institutions, escrow depositories, or collection agencies. ~~[An]~~ The electric utility shall not be responsible for lending, underwriting, and credit determinations in respect to these billing and collection activities.

(d) To the extent any revenues are received by ~~[an]~~ the 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]~~ revenues 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 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]~~ all step-in ~~[agreement-is]~~ agreements are terminated as described in section 269-B(d)~~[-]~~ or as otherwise directed by the director of finance.

(f) The department's contract with the electric utility for services pursuant to subsections (a) and (e) shall be exempt from chapter 103D." See page 25, line 12, through page 27, line 7.

We respectfully ask the Committee to amend this bill, as indicated, to address these concerns.



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WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
HOUSE BILL NO. 974, H.D. 1, S.D. 1

March 28, 2025
10:02 a.m.
Room 211 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, S.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 by 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 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; 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 remains concerned that this bill mandates execution of step-in agreements with no discretion to first determine whether doing so with respect to any individual IPP is in the best interests of the State under the circumstances.

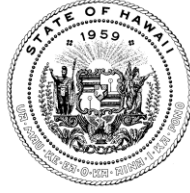
H.B. No. 974, H.D. 1, S.D. 1, requires B&F to conduct due diligence on all IPPs owed payment of power purchase costs within 30 days after the effective date of the measure. This is not a reasonable or feasible timeframe for due diligence of multiple IPPs. In any event, the due diligence requirement does not allow B&F to decline to enter into a step-in agreement if due diligence review uncovers facts and circumstances suggesting a particular step-in agreement is not in the best interests of the State or ratepayers.

It is important to point out that B&F does not have the necessary staff and expertise to conduct an effective due diligence review of entities in this industry, and will not be able to undertake the required reviews within the specified 30-day timeframe. Furthermore, the department also does not have the funding or capacity to take an active role as a party before the Public Utilities Commission (PUC) should the electric utility or its successor fail in its regulatory obligations under Section 269-B(k) of the proposed new Part (page 18, lines 6-14).

For those reasons, B&F strongly supports the Department of the Attorney General's proposal that due diligence instead be conducted by the PUC, and that a satisfactory due diligence review of an IPP should be a prerequisite to the requirement for B&F to enter into a step-in agreement with that IPP.

B&F is willing to continue working with all involved parties on this measure.

Thank you for your consideration of our comments.



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
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

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

Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Ways and Means
Friday, March 28, 2025
10:02 a.m.
Conference Room 211

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

WRITTEN TESTIMONY ONLY

Chair Dela Cruz and Members of the Committee:

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 money collected from on-bill charges for power purchase agreements and money received from a surcharge supporting a reserve account that are deposited in the Trust Fund shall be held in trust by the State, and that independent power producers shall hold a beneficial interest in the moneys to the extent of the amounts owed under the covered power purchase agreements; and (4) appoint, authorize, and empower an electric utility

to serve as the billing, collection, and payment 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.

Moreover, concerningly, this version of the bill would now require the State to enter into step-in agreements for purchased energy from any PPA, rather than only PPAs for projects arising from Hawaiian Electric's Stage 3 procurement and its first Integrated Grid Planning request for proposals. This broadening only benefits IPPs with existing PPAs and would result in a higher cost to ratepayers without a corresponding benefit. Ratepayers will need to pay even more into the Reserve Account. The legislation, as originally drafted, was conceived to enable IPPs to obtain better financing terms on renewable projects that have not yet been built or were switching from fully-fossil fuel powered to incorporate more renewable biofuel. The broadening of the scope to include any purchased power agreements is not in line with the original intended benefit of the legislation to the State, which is enabling new PPAs obtained in the stage 3 and first Integrated Grid Planning process to obtain better financing terms, which may possibly result in lower PPA pricing than without the legislation. The broadening to include existing PPAs provides them a benefit without any requirements of improved pricing for ratepayers despite ratepayers having to now pay higher rates. The Department therefore recommends that the definition of "covered power purchase agreement" from HB974 be reinstated to resolve this issue.

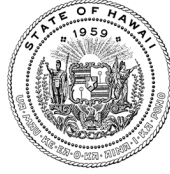
The Department believes that under the original definition of "covered power purchase agreement" this legislation may help provide a means to enable more cost-effective deployment of renewable energy more rapidly than without the legislation. However, it is critical that the legislation includes a mechanism to provide 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 past

amendments and testimony to the proposed legislation provided by the Attorney General and Department of Budget and Finance as appropriate and important considerations.

Thank you for the opportunity to testify on this bill.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



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Testimony of the Public Utilities Commission

To the
Senate Committee on
Ways and Means

Friday March 28, 2025
10:02 a.m.

Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee:

Measure: H.B. No. 974, H.D. 1, S.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 offers the following comment on H.B. 974 H.D. 1, S.D. 1:

- **Revert the scope in Section §269-B (b) back to version H.B. 974 H.D. 1**
The scope of the step-in agreements that the Department of Budget and Finance is required to enter into was expanded in H.B. 974 H.D. 1, S.D. 1 from covering only future Power Purchase Agreements ("PPAs") signed in Hawaiian Electric's Stage 3 RFP and the Integrated Grid Plan RFP to all future and current PPAs. From the Stage 1 and Stage 2 RFP processes, there are 10 active PPAs for utility-scale solar plus storage projects and one standalone battery storage PPA. There are also several smaller Community Based Renewable Energy PPAs. There are also many other PPAs executed outside recent procurement processes with entities such as Kalaeloa Partners, Kahuku Wind Power, Puna Geothermal

Ventures, and H-Power. There are two issues with retrospectively expanding the scope of this measure.

First, it is unclear how the Department of Budget and Finance can timely conduct due diligence on all active PPAs without Hawaiian Electric and the IPPs refiling the PPAs to open a docketed proceeding. The Commission currently has an understanding with the Department of Budget and Finance that the Commission will support the due diligence process by collecting documents through information requests from the parties during the docketed PPA approval process so that any sensitive company information will be under a protective order. Having numerous PPAs re-filed suddenly would create significant concerns for the Commission. The re-filings would create a backlog in the Commission's workflow resulting in either a delay in finalizing and progressing other Commission priorities, and/or delays of the reviews of the recently submitted PPAs and therefore in executing the step-in agreements.

Second, it is unclear the public will benefit from lower prices due to the expanded scope. A key purpose of the step-in agreements is to reduce IPP's PPA default risk exposure because of Hawaiian Electric's below-investment grade credit rating, thereby avoiding increased capital costs (>20% above previous Stage 1 and Stage 2) now required to develop new projects. The State's willingness to absorb that risk benefits the public by enabling IPPs to access capital at lower rates thereby avoiding the higher capital costs that otherwise would have unduly raised electricity prices. However, for existing PPAs, many of which were executed for 20+ year terms and were approved prior to the Maui Wildfires in August 2023, the capital costs are already baked into the PPA price. By requiring the State to enter into a step-in agreement with all IPPs for all current PPAs, the State is reducing IPPs and their lenders' risk without any assurance or guarantee of a corresponding reduction in PPA prices to ratepayers.

For these reasons, the Commission asks the Committee to amend Section 269-B(b) page 12 lines 10 - 11 to read as follows:

(b) The department shall 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 Commission respectfully defers all other comments 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.



Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair
Committee on Ways and Means

Friday, March 28, 2025; 10:02 a.m.
Conference Room 211 & Videoconference

RE: HB 974 HD1 SD1 – Relating to Energy – In Support

Aloha Chair Dela Cruz, Vice Chair Moriwaki, and members of the Committee,

My name is Wren Wescoatt, Vice President of Development for Longroad Energy (Longroad), and I am testifying in support of HB 974 HD1 SD1. 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 SD1 and ask that you give the measure your favorable consideration.

Mahalo,

A handwritten signature in black ink, appearing to read "Wren W. Wescoatt", written in a cursive style.

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

Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair
Committee on Ways and Means

Friday, March 28, 2025; 10:02 a.m.
Conference room 211 & Videoconference

RE: HB 974 HD1 SD1 Relating to Energy – In Support

Aloha Chair Dela Cruz, Vice Chair Moriwaki, and members of the Committee:

Plus Power appreciates this opportunity to submit testimony in support of HB 974 HD1 SD1, 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.

There is a need to replace retiring fossil fuel units. HB 974 HD1 SD1 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

**Testimony to the Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair**

**Friday, March 28, 2025, at 10:02AM
Conference Room 211 & Videoconference**

RE: HB974 HD1 SD1 Relating to Energy

Aloha e Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee:

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 Senate Draft 1 (HB974 HD1 SD1), 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 money collected from on-bill charges for power purchase agreements and money received from a surcharge supporting a reserve account that are deposited in the Trust Fund shall be held in trust by the State, and that independent power producers shall hold a beneficial interest in the moneys to the extent of the amounts owed under the covered power purchase agreements. Appoints, authorizes, and empowers an electric utility to serve as the billing, collection, and payment agent of the Department of Budget and Finance in the service of performing step-in agreements.

HB974 HD1 SD1 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.

Hawaii urgently needs to develop affordable, renewable energy resources to replace aging, fossil-fuel-based generating units, which are fast approaching obsolescence and subject to stricter environmental requirements. This measure proposes "step-in agreements" and a special trust fund to ensure that independent power producers (IPPs) receive timely payments for power purchased by an investor-owned electric utility, even if the utility defaults on its obligations. By offering added credit assurances to IPPs, the State can more reliably support new clean energy projects, maintain consistent electricity service for consumers, and align with Hawaii's goal of one hundred percent renewable energy by 2045. The Chamber supports this legislation because it promotes economic resilience, ensures continued progress on renewable energy initiatives, and safeguards reliable power for Hawaii's communities.

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 Senate Draft 1. Thank you for the opportunity to testify.



**Hawaiian
Electric**

TESTIMONY BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

**STRONG SUPPORT OF HB 974, HD1, SD1
Relating to Energy**

Friday, March 28, 2025
10:02 AM
State Capitol, Conference Room 211

Rebecca Dayhuff Matsushima
Vice President, Resource Procurement
Hawaiian Electric

Dear Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee,

My name is Rebecca Dayhuff Matsushima and I am submitting written testimony on behalf of Hawaiian Electric in **strong support** of HB 974, HD1, SD1, 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 ("B&F"), 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, SD1 incorporates many amendments that were suggested during this legislative session to address the concerns of the State agencies and IPPs. In an ongoing effort to address concerns raised by these stakeholders, Hawaiian Electric respectfully suggests additional improvements to this bill, many 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.

We would like to emphasize the rationale behind two of our proposed amendments (and as further explained in the first attachment):

- Narrowing the scope of covered power purchase agreements: HB974, HD1, SD1 removed language that limited the scope of covered power purchase agreements (“PPAs”) to those arising from Hawaiian Electric’s Stage 3 and first Integrated Grid Planning (“IGP”) Requests for Proposals (“RFP”). As currently drafted, the bill appears to now include all future PPAs beyond those RFPs and existing PPAs that are already transmitting power to the utility.

Hawaiian Electric respectfully submits that such a broad scope would be detrimental to customers. Existing projects have already been financed and do not require a step-in agreement. Including existing PPAs in the scope of HB 974 would therefore unnecessarily increase the bills of customers without providing any benefits, because it would increase the amount of fees required for the reserve account, which are based upon the forecasted monthly power purchase costs of all covered PPAs. We estimate that funding the reserve account to also cover all existing projects would quadruple its size relative to those reserve fees anticipated for future Stage 3 PPAs, or potentially more than double the total size of the reserve account, depending on the projects arising from the IGP RFP. This would likely lead to a reserve account close to, if not over, \$20 million. It would also take a much longer period of time to fund the reserve account, extending the collection period for reserve fees on customer bills. Finally, including future projects beyond the IGP RFP in the scope of covered PPAs would have uncertain effects on the reserve account. It is very difficult at this juncture to estimate impacts on customer bills that far in the future.

- Incorporating requirements for the Public Utilities Commission: Pursuant to HB 974, HD1, SD1, B&F shall enter into a step-in agreement after receipt of satisfactory results from a due diligence investigation. Because this function rests with the department, and because any recourse by the IPPs is limited only to the revenues from power purchase charges and reserve fees, Hawaiian Electric respectfully submits that the Public Utilities Commission’s associated responsibilities should be mandatory. If its functions remain discretionary, the effectiveness of the bill will be critically eroded, as financing parties will

not have assurance of adequate payments as and when due under the power purchase agreement from the revenues of the power purchase charges and reserve fees.

With the attached proposed amendments, HB 974, HD1, SD1 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 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 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 B&F 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, with the proposed amendments to the legislation, 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 covered 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. PPA costs to the utility are passed through to customers without mark-up by the utility.

Hawaiian Electric believes that the customer benefits provided by this bill, with the proposed amendments, 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, SD1 with proposed amendments. Thank you for this opportunity to submit written testimony.

Encl: 2 Attachments

Proposed Amendments to HB 974, HD1, SD1

Hawaiian Electric respectfully requests adoption of all of the following proposed amendments in the attached redline of HB 974, HD1, SD1. These edits are necessary to ensure that the bill achieves cost reductions for customers from power purchase agreements arising from Hawaiian Electric's Stage 3 and Integrated Grid Planning ("IGP") requests for proposals. The below sets forth the policy rationale for each of the proposed edits.

1. Limitation to Stage 3 and Integrated Grid Planning Requests for Proposals

Definitions, 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.

This proposed amendment reinserts a key date limitation to prevent step-in agreements from applying to previous IPP projects that already provide, sell, or transmit electricity to the utility.

Step-in agreements for these projects would *not* deliver *any* pricing benefits to customers. Because these projects have already been financed, and are delivering power at agreed-upon rates, the step-in agreement is highly unlikely to reduce rates at all. In addition, power purchase charges for these projects have already been pledged under Hawaiian Electric's accounts receivable credit facility. This prevents Hawaiian Electric from assigning and transferring title to such charges to the department free and clear of encumbrances—a provision necessary for the department to assure step-in agreement counterparties that payments will continue to be made upon default, and to ensure that department's title over the charges will not be affected in a bankruptcy event.

As a result, applying step-in agreements to these previous projects would drastically increase costs for customers for virtually no benefit. They would require the imposition of a reserve fees, which for these past projects, Hawaiian Electric currently anticipates would be approximately *quadruple* the amount of reserve fees currently anticipated for future Stage 3 projects or double the total size of the reserve account needed. Implementing this edit ensures that step-in agreements are only applied to those projects that will deliver benefits to customers.

Section 1, Paragraph 2

The procurement or purchase of energy from 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, ~~and other proposals~~. These proposals will 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 purchase of energy from clean energy resources is in the public interest and necessary to avoid significant detrimental reliability and affordability impacts to electric utility customers.

Section 269-B(b)

(b) The department shall enter into a step-in agreement ~~for each covered~~ 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 enter into a step-in agreement related to a power purchase agreement when the power purchase agreement is executed, or if the power purchase agreement has already been executed as of July 1, 2025, as soon as reasonably possible.

Consistent with the above limitation, these proposed amendments reinsert language from prior drafts of the bill to limit the scope of the covered power purchase agreements (“PPAs”) to *only* those arising from the Stage 3 and Integrated Grid Planning (“IGP”) requests for proposals.

Any application of step-in agreements to future PPAs beyond those requests for proposals would have the effect of permitting an unpredictable *increase* in rates (due to increases in reserve fees), without knowledge of whether step-in agreements are actually appropriate for those projects. It is entirely speculative at this juncture to consider step-in agreements for projects arising from unspecified requests for proposals that have not yet even been docketed before the commission. Rather than permit an open-ended application of step-in agreements in the abstract, the legislature should revisit whether the step-in agreement framework, including the imposition of reserve fees, continues to be appropriate given the state of the utility following the IGP requests for proposals.

2. Imposition of Public Utilities Commission Requirements

Section 269-B(j)

(j) Notwithstanding any other law to the contrary, the electric utility shall file with the public utilities commission, and the public utilities commission ~~may~~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:

Section 269-E(a)

(a) By August 1, 2025, the public utilities commission ~~may~~shall create a ~~utility-wide nonbypassable~~ surcharge, referred to as reserve fees, which shall be deposited into an account within the fund and 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.

These proposed amendments, by replacing “may” with “shall” in two key sections, restore language that would *require* the commission to (1) allow to become effective monthly filing requirements ensuring sufficient moneys to timely pay amounts as and when due under covered PPAs; and (2) create a surcharge for reserve fees.

These two proposed amendments of “shall” are crucial for this bill to deliver reduced costs to customers. Utilizing a “may” rather than a “shall” does not provide the necessary assurances to IPPs or financing parties that there will be an continuing and ongoing source of revenues to timely pay in full the obligations under the covered PPA. With respect to section 269-B(j), the use of “may” contemplates that the commission *could* reject monthly rate adjustments designed to “[g]enerate sufficient moneys . . . to timely and fully pay amounts when owed and due” and to minimize the risk of a draw on the reserve account. As for section 269-E(a), the use of “may” contemplates that the commission *could* reject collection of reserve fees necessary to timely and fully pay IPPs in the event that, for example, demand forecasts underestimate actual demand, as can happen with all forecasts due to no fault of the utility or the department. The negotiation and pricing of PPAs will account for such risks and uncertainty in commission behavior by *increasing* the cost of financing and consequently the prices of power. Indeed, such assurances in the legislation are necessary precisely because the legislation limits any recourse by the IPPs to only these revenue streams, and not to any moneys of the State.

The legislation is otherwise drafted in a manner to eliminate risks from the imposing such requirements on the commission. The legislation clearly and expressly limits the amounts and defines the purpose of both monthly rate adjustments and reserve fees, preventing them from being collected in excess beyond that which is strictly necessary to provide assurances to IPPs. Furthermore, the commission, as always, retains its discretion to approve or disapprove PPAs (including those covered by a step-

in agreement) under Section 269-16.22. Notably, that section establishes clear precedent for this approach of using of “shall” in this bill: Section 269-16.22 likewise *requires* the commission to establish an adjustable surcharge to pay for power purchase costs.

Section 269-B(i)

(i) To meet the requirements of the State and the public utilities commission pertaining 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 ~~may~~ shall exercise its regulatory powers to ensure that the electric utility complies with its obligations under the covered power purchase agreement.

This proposed amendment is necessary to address any concerns by IPPs and financing parties that a utility may reject the covered PPA in the case of a bankruptcy proceeding.

The proposed amendment of including “shall”, rather than “may”, is necessary to give any meaningful effect to this provision. Its intended effect is to obligate and compel the utility’s adherence to the covered PPA through state regulatory power. Utilizing a “may” rather than a “shall” for the imposition of regulatory power by the state renders that obligation a nullity. It prevents this provision from delivering the requisite assurance to the IPPs and financing parties up front and *prior* to their entry into a covered PPA.

3. Removal of “Utility-Wide Nonbypassable” Language

Section 269-E(a)

(a) By August 1, 2025, the public utilities commission ~~may~~ shall create a ~~utility-wide nonbypassable~~ surcharge, referred to as reserve fees, which shall be deposited into an account within the fund and 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 in full by the electric utility or its successors, as collection agents for the department, 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

This proposed amendment removing the language of “utility-wide nonbypassable” and adding language allowing the surcharge to be part of the “power purchase adjustment clause on customer bills” is necessary to avoid equity issues between islands and to minimize implementation challenges and costs.

The language of “utility-wide nonbypassable” would impose the following effect: all customers of a certain rate schedule, on all islands, would pay the same fixed amount for reserve fees at the same dollar amount per customer per month. This language would *prevent* the surcharge from being included in any volumetric charge, such as the purchased power adjustment clause. Inclusion of reserve fees in the volumetric purchased power adjustment clause, however, would be a more equitable design. Any individual project associated with a covered PPA would deliver benefits to only one of the islands, and a fixed charge across all customers across all islands would thus be inappropriate. Including the fee as part of the volumetric power purchase adjustment clause would allow the utility to assign the cost to customers in a manner allocated to those that actually benefit from the covered PPAs. In addition, there are administrative, IT, and billing-related hurdles and costs associated with creation of a new “utility-wide nonbypassable” charge that, while not insurmountable, would nevertheless likely delay implementation of the legislation and may result in unnecessary additional customer costs. Simply including the separate reserve fee surcharge as part of the purchased power adjustment clause on customer bills allows the most equitable and administrable approach.

4. Management of Revenues

Passim (See attached redline: Section 1, paragraph 6; Section 1, paragraph 7, subsection (4); Section 269-B(g); Section 269-C(e))

Section 269-F(a)

(a) To implement the requirements of this part, the department may 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, other monetary relief, or compensatory damages in connection with a breach of any agency agreement.

Section 269-F(e)

(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 collect, manage, 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).

These proposed amendments reintroduce language allowing the utility to “manage” funds that are held in trust by the department. The process of collecting revenues and making payment under PPAs in the normal course includes a range of

activities that could be construed as “management” of revenues and moneys: e.g., meter reads, sending bills, handling delinquencies, processing and depositing collections and other customer service functions, and calculations of ECRC and PPAC revenues, among others. Because Section 269-F contemplates that Hawaiian Electric and the department will enter into an agreement specifying the responsibilities of Hawaiian Electric as the agent, it is prudent to allow flexibility in the statutory framework to account for any unforeseen scenarios that are identified during the process of developing that agreement. That process also allows the department to specifically address any concerns it has with Hawaiian Electric’s management of moneys held in trust by the department.

There is clear precedent for this language in the Green Energy Market Securitization (GEMS) program. The language of the service provider agreement between the utility (the service provider) and the State under the GEMS program provides that the “Service Provider’s duties in general shall include *management*, servicing and administration of the Green Infrastructure Property to be collected by it” The proposed statutory language is therefore consistent with the responsibilities already exercised by Hawaiian Electric on behalf of the State for the GEMS program.

5. Due Diligence by the Department

Section 269-B(a)

(a) The department shall enter into a step-in agreement with an obligee after receipt of satisfactory results from a due diligence investigation by the department of an obligee and the proposed step-in agreement. The step-in agreement shall require 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 entering into any step-in agreement, the department shall conduct due diligence on the obligee, including through communication with the prospective obligee, within thirty days of a request to enter into a step-in agreement~~the effective date of this Act~~. Pursuant to the

This proposed edit addresses an implementation oversight in the legislation. The legislation encompasses future projects, including those procured from the IGP request for proposals. While the IGP request for proposals is going through the approval process before the public utilities commission, selection and award of projects is currently scheduled in late 2025. As a result, the department cannot conduct due diligence on unidentified obligees (for power purchase agreements and projects that do not yet exist) within thirty days of the effective date of the Act. To account for these future projects without identified obligees, the proposed edit provides that due diligence must occur within thirty days of a “request to the department to enter into a step-in agreement.”

6. Termination at End of Term of the Step-In Agreement

Section 269-B(d)

(d) The step-in agreement shall terminate, in addition to at the conclusion of its defined term, 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. 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.

This proposed amendment is necessary to clarify the obligations that arise at the end of the term of the step-in agreement. Several key sections of the bill refer to this Section 269-B(d) to describe the implications of termination of the step-in agreement for the utility, department, and others. For example, Section 269-E(c) states that termination pursuant to this provision ceases collection of reserve fees. Section 269-F(e) states that termination pursuant to this provision likewise terminates any appointment of the utility as a payment agent of the department. Section 269-C(e) states that termination pursuant to this provision also ceases transfer of title to power purchase charges to the department, and Section 269-D(c) states that termination pursuant to this provision causes the fund to cease receiving power purchase charges. This proposed edit simply clarifies that these effects also occur when the step-in agreement terminates upon the conclusion of its defined term.

7. Two Days for Transfer of Funds

Section 269-C(a)

(a) If 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 the notice of the default. ~~One~~ Two days after the electric utility receives the notice, the electric utility shall transfer all revenues from the power purchase charges arising from any covered power purchase agreements identified in the notice and 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

Section 269-E(a)

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 to accept and account for revenues from reserve fees, and the electric utility shall, within ~~one~~ two days of receipt, transfer all revenues collected from the surcharge related to the reserve fees directly into the account. The

This proposed amendment is necessary because of implementation challenges inherent to delivering on a one-day transfer. Same day processing of wire day transfers in Hawaii must occur in the morning and cannot occur in the afternoon or evening. Hawaiian Electric simply may not have adequate time to internally administer, calculate, and segregate revenues from various agreements and charges, and transfer those revenues within a one-day timeframe.

8. Other

Section 269-C(a)(1)

(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 ~~.~~

This minor proposed amendment of exchanging commas and semi-colons only seeks to clarify that the phrase “for revenues in excess of amounts owed under covered power purchase agreements” applies to subparagraphs (2) and (3), and not to subparagraph (1).

A BILL FOR AN ACT

RELATING TO ENERGY.

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

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

14 The procurement or purchase of energy from replacement
15 clean energy resources by a certain investor-owned electric

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

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

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

1 concerns about the reliability of payment by the utility and
2 its subsidiaries under power purchase agreements procured
3 through the Stage 3 and Integrated Grid Planning requests for
4 proposals. Those concerns may cause independent power
5 producers to cancel renewable energy projects or increase the
6 prices they would charge for deliveries to address this
7 perceived credit risk. Either outcome would be contrary to the
8 interests of electric utility customers in the State.

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

23 The legislature finds that step-in agreements may provide
24 assurances that payments for purchased power will be made to
25 independent power producers as and when due by the utility
26 under the covered power purchase agreements. The legislature
27 also finds that the intent of this Act is further served by

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

13 Therefore, the purpose of this Act is to:

14 (1) Require the department of budget and finance to enter
15 into a step-in agreement with an independent power producer
16 under which the department of budget and finance will agree to
17 make required payments to the independent power producer after
18 a failure by the electric utility to make required payments
19 pursuant to the terms of a power purchase agreement;

20 (2) Establish a trust fund outside the state treasury
21 that shall be capitalized by money from a surcharge supporting
22 a reserve account and, in the event of a default, by money
23 received from power purchase charges, in each case associated
24 with covered power purchase agreements, for the fulfillment of
25 payment obligations arising from the power purchase agreement;

26 (3) Establish that money collected from on-bill charges
27 associated with covered power purchase agreements and money

1 from a surcharge supporting a reserve account that are
2 deposited in the power purchase costs trust fund shall be held
3 in trust by the State, and that independent power producers
4 shall hold a beneficial interest in the moneys to the extent of
5 the amounts owed to such independent power producers under the
6 covered power purchase agreements; and

7 (4) Appoint, authorize, and empower an electric utility
8 to serve as the billing, collection, ~~and payment,~~ and
9 management agent of the department of budget and finance to
10 implement the requirements of this Act.

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

14 "Part. STEP-IN AGREEMENTS COVERING POWER PURCHASE COSTS

15 §269-A Definitions. As used in this part:

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

18 "Default" means the failure by an electric utility to pay
19 power purchase costs as and when due to an obligee under a
20 covered power purchase agreement after the expiration of any
21 applicable grace or cure periods and extensions thereto.

22 "Default" shall not mean a bankruptcy filing by an electric
23 utility.

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

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

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

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

8 "Investment grade status" means a credit rating for the
9 electric utility's senior unsecured long-term debt obligations
10 or an issuer credit rating for the electric utility, in each
11 case, without regard for third-party credit enhancements, from
12 at least two out of three of the following:

13 (1) BBB- or higher for S&P Global Ratings, or any
14 successor by law;

15 (2) BAA3 or higher by Moody's Investor Services, Inc., or
16 any successor by law; or

17 (3) BBB- or higher by Fitch Ratings, Inc., or any
18 successor by law.

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

22 "Power purchase agreement" means a contract between an
23 electric utility and a user, owner, or operator of the Hawaii
24 electric system, approved by the public utilities commission,
25 pursuant to which the electric utility agrees to purchase, and
26 the user, owner, or operator of the Hawaii electric system
27 agrees to sell, electric energy and related products produced

1 by plants or facilities that have not provided, sold, or
2 transmitted electricity to the electric utility before July 1,
3 2025.

4 "Power purchase charges" means the on-bill charges,
5 excluding reserve fees, authorized by the public utilities
6 commission to be imposed on and collected from all existing and
7 future customers of an electric utility or any successor for
8 power purchase costs, including but not limited to the energy
9 cost recovery clause and the purchased power adjustment clause.

10 "Power purchase costs" means costs incurred by an electric
11 utility pursuant to the terms of a power purchase agreement,
12 including without limitation, costs such as termination
13 payments payable by an electric utility in connection with the
14 termination of a power purchase agreement as a result of a
15 default by the electric utility. "Power purchase costs"
16 includes, without limitation, all categories of costs
17 recoverable under the energy cost recovery clause and the
18 purchased power adjustment clause under their respective
19 tariffs.

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

25 "Reserve fees" means the surcharges described in section
26 269-E(a).

1 "Revenue" means moneys from power purchase charges and
2 reserve fees net of any applicable taxes or government fees,
3 including but not limited to the franchise tax, public service
4 company tax, and public utilities commission fee.

5 "Step-in agreement" means a contract by which the
6 department undertakes the obligation of payment for power
7 purchase costs owed to an obligee as and when due by an
8 electric utility under a power purchase agreement following a
9 default, as described in section 269-B(a); provided that the
10 department's payment obligation under the step-in agreement is
11 limited to the moneys from power purchase charges and reserve
12 fees collected in connection with the covered power purchase
13 agreements and on deposit in the fund.

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

16 §269-B Step-in agreements.

17 (a) The department shall enter into a step-in agreement
18 with an obligee after receipt of satisfactory results from a
19 due diligence investigation by the department of an obligee and
20 the proposed step-in agreement. The step-in agreement shall
21 require the department to make payments for power purchase
22 costs owed by an electric utility to the obligee in the event
23 of a default; provided that before entering into any step-in
24 agreement, the department shall conduct due diligence on the
25 obligee, including through communication with the prospective
26 obligee, within thirty days of ~~the effective date of this Act~~
27 request to enter into a step-in agreement. Pursuant to the

1 step-in agreement and upon the default, the department shall
2 make payments to the obligee for power purchase costs with
3 moneys on deposit in the fund as and when due by the electric
4 utility under the covered power purchase agreement; provided
5 that any step-in agreement shall provide that the department's
6 payment obligation thereunder shall be limited to the moneys
7 from power purchase charges and reserve fees collected in
8 connection with covered power purchase agreements that are on
9 deposit in the fund. Each step-in agreement shall include a
10 clause stating that neither the full faith and credit of the
11 State nor any other moneys of the State will be pledged for any
12 obligations pursuant to the terms of the step-in agreement;
13 that in any action concerning a failure by the department to
14 comply with the terms of the step-in agreement, the sole and
15 exclusive remedy available to an obligee and the electric
16 utility against the department shall be an order directing
17 specific performance of the step-in agreement; and that under
18 no circumstances shall the department be liable for any costs,
19 expenses, other monetary relief, or compensatory damages. An
20 obligee of a covered power purchase agreement shall have no
21 claim or lien on any moneys of the State except for those
22 revenues from the power purchase charges and reserve fees
23 attributable to the covered power purchase agreement that are
24 transferred by the electric utility and on deposit in the fund.
25 An obligee shall remain entitled to all payments for power
26 purchase costs owed under the covered power purchase agreement,
27 whether or not the moneys from power purchase charges

1 attributable to the covered power purchase agreement are timely
2 collected. Notwithstanding anything to the contrary in this
3 part, a step-in agreement shall also obligate the department to
4 pay claims of the obligee from moneys on deposit in the fund
5 arising out of termination of a power purchase agreement by the
6 electric utility under bankruptcy law.

7 (b) The department shall enter into a step-in agreement
8 ~~for each covered~~only if the power purchase agreement subject to
9 the step-in agreement arises from the Stage 3 request for
10 proposals under docket number 2017-0352 before the public
11 utilities commission or the first Integrated Grid Planning
12 request for proposals issued under docket number 2024-0258
13 before the public utilities commission. The department shall
14 enter into a step-in agreement related to a power purchase
15 agreement when the power purchase agreement is executed, or if
16 the power purchase agreement has already been executed as of
17 July 1, 2025, as soon as reasonably possible.

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

22 (d) The step-in agreement shall terminate, in addition to
23 at the conclusion of its defined term, when the credit rating
24 of the electric utility or its successor achieves investment
25 grade status or by express agreement of the obligee,
26 department, and electric utility. Following the termination of
27 a step-in agreement, the department shall have no obligation to

1 the electric utility or the obligee upon a default by the
2 electric utility.

3 (e) Following a default of a covered power purchase
4 agreement and any payment by the department from moneys in the
5 fund, the electric utility, through agreement with all obligees
6 of its covered power purchase agreements, may elect to resume
7 payments for power purchase costs owed by the electric utility,
8 regardless of the credit rating of the electric utility at that
9 time, in which case the electric utility shall cease to
10 transfer revenues representing moneys from power purchase
11 charges collected in connection with the covered power purchase
12 agreement to the fund as described in section 269-C(a), and may
13 use the revenues from power purchase charges through the
14 vesting of title in the electric utility as described in
15 subsection (h); provided that the payments shall not terminate
16 the step-in agreement, which shall remain in effect until
17 terminated pursuant to subsection (d), and the department shall
18 remain obligated to pay the obligee upon a subsequent default
19 by the electric utility solely from moneys on deposit in the
20 fund; provided further that no such election by the electric
21 utility shall be permitted if the department has made payment
22 for power purchase costs with moneys from the reserve fees.

23 (f) The department may impose other conditions, and may
24 include other terms, in a step-in agreement that it deems
25 necessary to implement the requirements of this part; provided
26 that the conditions and terms shall not adversely affect the
27 obligation of the department to make payments, but only to the

1 extent that there are moneys in the fund for power purchase
2 costs owed by an electric utility to the obligee as and when
3 due in the event of a default as required by section 269-B(a)
4 or otherwise inconsistent with the covered power purchase
5 agreement.

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

1 (h) Prior to default or an entry of an order of relief
2 with respect to the electric utility under title 11 of the
3 United States Code, if any payment obligation of the electric
4 utility under a covered power purchase agreement for power
5 purchase costs becomes owed and due, any title held by the
6 department in trust to the revenues related to moneys from
7 power purchase charges for the payment obligation owed and due
8 shall divest from the department and vest in the electric
9 utility or its successor at the time the payment by the
10 electric utility or its successor is made to the obligee. Any
11 vesting of moneys from power purchase charges to the electric
12 utility at the time of payment may be made without
13 appropriation by the legislature or allotment. The department
14 shall not otherwise assign, sell, or transfer any title to, or
15 any claim or right to, the revenues from power purchase charges
16 or reserve fees.

17 (i) To meet the requirements of the State and the public
18 utilities commission pertaining to electric reliability, energy
19 security, and energy diversification under this chapter and any
20 rules adopted pursuant thereto, the electric utility shall
21 ensure that it maintains sufficient availability of electric
22 energy and related products, to the extent provided by an
23 obligee in accordance with a covered power purchase agreement.
24 The public utilities commission ~~may~~shall exercise its
25 regulatory powers to ensure that the electric utility complies
26 with its obligations under the covered power purchase
27 agreement.

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

8 (1) Generate sufficient moneys from power purchase
9 charges to timely and fully pay amounts when owed and due under
10 covered power purchase agreements;

11 (2) Ensure that in no event shall moneys from power
12 purchase charges fall below the amounts owed and due under
13 covered power purchase agreements by a sum that exceeds the
14 amounts in the reserve account established under section 269-E;
15 and

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

20 To achieve the objectives established pursuant to this
21 subsection, unless the public utilities commission otherwise
22 directs, the electric utility may retain revenues collected
23 from power purchase charges in excess of amounts owed and due
24 under the covered power purchase agreements. Any moneys in the
25 reserve account established under the fund shall remain with
26 the department. The obligations of the electric utility and of
27 the public utilities commission under this section shall

1 survive any default by the electric utility and shall terminate
2 only upon the termination of the step-in agreement as provided
3 in subsection (d).

4 (k) If an obligee provides notice to the department that
5 the electric utility has failed to timely file any submission
6 as described in subsection (j), the department shall promptly
7 file, or direct the electric utility to file, pursuant to
8 section 269 F(a), and the public utilities commission shall
9 allow to become effective, a substitute filing as if the filing
10 had been submitted by the electric utility under subsection
11 (j). The electric utility shall implement the power purchase
12 charges in the substitute filing from the department.

13 §269-C Default of electric utility; successor
14 requirements.

15 (a) If the obligee provides notice to the department of a
16 default of a covered power purchase agreement, the department
17 shall promptly provide the electric utility with a copy of the
18 notice of the default. ~~One~~Two days after the electric utility
19 receives the notice, the electric utility shall transfer all
20 revenues from the power purchase charges arising from any
21 covered power purchase agreements identified in the notice and
22 reserve fees, regardless of when collected, then in its
23 possession, and, subject to section 269-B(e), all future
24 revenues from the power purchase charges and reserve fees
25 thereafter collected to the fund established pursuant to
26 section 269-D(a). These amounts shall include all revenues
27 received by the electric utility after a default for the power

1 purchase charges and reserve fees billed before the default.
2 The department shall use the revenues collected from the power
3 purchase charges and reserve fees on deposit in the fund only
4 in the order as follows:

5 (1) To pay power purchase costs pursuant to step-in
6 agreements, subject to the appointment, authorization, and
7 empowerment of the electric utility as an agent as described in
8 section 269-F(e) ~~17~~ and for revenues in excess of amounts owed
9 under covered power purchase agreements ~~17~~

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

13 (3) To implement a rate credit to customers.

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

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

23 (d) Any successor to an electric utility shall be bound
24 by the requirements of this part. The successor shall perform
25 and satisfy all obligations of the electric utility in the same
26 manner and to the same extent as the electric utility,
27 including the obligation upon default to bill and collect the

1 power purchase charges and reserve fees and remit to the fund
2 the revenues collected in connection with any covered power
3 purchase agreement, unless and until the step-in agreement is
4 terminated as described in section 269--B(d).

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

17 §269-D Power purchase costs trust fund. (a) There is
18 established outside the state treasury the power purchase costs
19 trust fund to be administered by the department. The
20 department shall establish and maintain two separate accounts
21 within the fund, with the first account to be utilized for the
22 deposit of all power purchase charges transferred by the
23 electric utility, and the second account to be utilized for the
24 deposit of reserve fees transferred by the electric utility.
25 The electric utility shall transfer to the department for
26 deposit into the applicable account in the fund all revenues

1 collected in connection with covered power purchase agreements
2 from:

3 (1) Power purchase charges in the event of a default of
4 covered power purchase agreements; and

5 (2) Reserve fees.

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

12 (c) If a step-in agreement is terminated as described in
13 section 269-B(d), the fund shall cease to receive any moneys
14 from the power purchase charges collected by the electric
15 utility or its successor and the department shall pay to the
16 electric utility or its successor the remainder of any moneys
17 in the fund attributable to power purchase charges, which shall
18 be considered moneys of the electric utility or its successor.

19 (d) The department shall be under no obligation to make
20 payment to any obligee in excess of the moneys in the fund.
21 Any default or failure by the department to make payments
22 pursuant to the terms of a step-in agreement under this part
23 shall not result in any recourse by the electric utility or
24 obligee to any funds of the State. An obligee shall only have
25 the benefit of moneys derived from power purchase charges and
26 the reserve fee collected and on deposit in the fund. In any
27 action concerning a breach by the department of a step-in

1 agreement, the sole and exclusive remedy available to an
2 obligee and the electric utility against the department shall
3 be an order directing specific performance of the step-in
4 agreement and under no circumstances shall the department be
5 liable for any costs, expenses, any monetary relief, or
6 compensatory damages.

7 §269-E Reserve account; establishment.

8 (a) By August 1, 2025, the public utilities commission
9 ~~may shall~~ create a ~~utility-wide nonbypassable~~ surcharge,
10 referred to as reserve fees, which shall be deposited into an
11 account within the fund and pledged to secure and be applied to
12 the repayment of payment obligations under a covered power
13 purchase agreement to the extent that there is a shortfall in
14 the amount of power purchase charges on deposit in the fund.
15 Reserve fees shall be collected in full by the electric utility
16 or its successors, as collection agents for the department,
17 through a surcharge that is separate and apart from the
18 electric utility's rates. Reserve fees may be included in the
19 purchased power adjustment clause on customer bills. The
20 department shall establish and maintain a separate account
21 within the fund to accept and account for revenues from reserve
22 fees, and the electric utility shall, within ~~one~~ two days of
23 receipt, transfer all revenues collected from the surcharge
24 related to the reserve fees directly into the account. The
25 electric utility shall not otherwise assign, sell, or transfer
26 any title to, or any claim or right to, the revenues from
27 reserve fees, except as provided under this part. The electric

1 utility shall not access the reserve account or utilize the
2 revenues deposited therein, except as directed by the
3 department pursuant to section 269--F(e). The public utilities
4 commission may require, in the financing order creating the
5 surcharge, that, if a default occurs by the electric utility in
6 remittance of the reserve fee collected, the public utilities
7 commission, upon the application by the department, and without
8 limiting any other remedies available to the department by
9 reason of the default, shall order the sequestration and
10 payment to the department of the reserve fee. Any order shall
11 remain in full force and effect notwithstanding any bankruptcy,
12 reorganization, or other insolvency proceedings with respect to
13 the electric utility.

14 (b) Reserve fees shall be collected and maintained, and
15 if necessary, reinstated, to establish and replenish a reserve
16 account in an amount not to exceed the total of fifteen per
17 cent of the forecasted monthly power purchase costs of all
18 covered power purchase agreements plus an amount sufficient to
19 recover costs related to administration of the reserve account
20 and any applicable taxes and fees.

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

27 §269-F Electric utility; agent of the department.

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

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

16 (c) The act of serving as an agent to bill and to collect
17 the power purchase charges and reserve fees shall not cause any
18 electric utility to be subject to the laws that regulate
19 financial institutions, escrow depositories, or collection
20 agencies. An electric utility shall not be responsible for
21 lending, underwriting, and credit determinations in respect to
22 these billing and collection activities.

23 (d) To the extent any revenues are received by an
24 electric utility pursuant to subsection (a) in the process of
25 collection, and pending their transfer to the fund pursuant to
26 section 269-D(a), those moneys shall be held in trust for the
27 department's exercise of its obligations pursuant to this part.

.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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



March 27, 2025

Via Electronic Submittal

Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair

Friday, March 28, 2025; 10:02 a.m.
Conference Room 211 & Videoconference

RE: HB 974 HD1 SD1 – Relating to Energy – In Support, Request Amendment

Aloha Chair Dela Cruz, Vice Chair Moriwaki, and members of the Committee:

Clearway Energy Group LLC (“Clearway”) supports HB 974 HD1 SD1, 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 SD1 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.

Importantly, the bill does not provide any State funding or guarantee for power purchase agreements. The role of the State would only be to temporarily hold title to the revenues that flow to power providers if there is an interruption in payments from the utility. A limited reserve fund would be created to reduce the likelihood of a shortfall in payments. When the utility returns to investment-grade status, the contract protection would be removed and the reserve fund would be returned to ratepayers.

Currently, there is no provision in the bill to restore the step-in agreements if the utility's return to investment-grade status is fleeting. Clearway recommends amending Section 2, §269-B(d) such that the termination of step-in agreements is triggered when the utility maintains investment-grade status for at least three months, rather than immediately.

HB 974 HD1 SD1 would improve access to financing for renewable energy projects, with a very limited impact on the State or on electricity customers. We encourage the Committee to pass HB 974 HD1 SD1 with our requested amendment.

Thank you for the opportunity to submit testimony on this matter.

Nicola Park
Director, Hawaii
Clearway Energy Group

House Bill 974 HD1 SD1 – Relating to Renewable Energy
TESTIMONY

Hawai'i State Senate
Senate Committee on Ways and Means
Friday, March 28, 2025
10:02 a.m.

Aloha Chair Dela Cruz, Vice Chair Moriwaki and Committee Members,

Mahalo for the opportunity to provide testimony in **support of HB 974 HD1 SD1, 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 HD1 SD1 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. **Sections 269-F (a) and (e) 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.
 - (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)."
2. **Section 269-E(a): Require that the department or the electric utility request the PUC to create a utility-wide nonbypassable surcharge.** The surcharge will need to be requested by either the department or the electric utility since the PUC is not required to create the surcharge in the current bill.
 - (a) Revise the first sentence of 269-E(a) as follows: By August 1, 2025, the department shall promptly file, or direct the electric utility to file, submissions with the public utilities commission for the creation of a utility-wide nonbypassable surcharge, and the public utilities commission may create a utility-wide nonbypassable surcharge, referred to as reserve fees, which shall be deposited into an account within the fund and 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.
3. **Clarify that Step-in Agreements obligations are payable from all moneys in the fund.** The current bill should consistently provide that step-in agreement obligations are payable from all moneys in the fund, not solely from power purchase charges and reserve fees attributable to a particular covered power purchase agreement.

(a) The second sentence of the fifth paragraph of the bill should be revised as follows: The department of budget and finance's obligation to make payments pursuant to the terms of a step-in agreement is limited to the moneys associated with ~~a~~ power purchase agreements subject to ~~a~~ step-in agreements and reserve fees that are on deposit in a power purchase costs trust fund.

(b) The fifth sentence of Section 269-B(a) should be revised as follows: 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 ~~the~~ covered power purchase agreements that are transferred by the electric utility and on deposit in the fund.

4. Account for the possibility that the electric utility may not be appointed as collection agent for the covered power purchase charges and reserve fees.

(a) In the second sentence of 269-D(a) add the words “or other collection agents” after the words “electric utility” in two places in that sentence.

(b) In the second sentence of 269-E(a) add the words “or other collection agents” after the word “successors”.

5. Technical amendments.

(a) 269-B(f): Add the word “be” before the word “inconsistent” on the second to last line of this subsection.

(b) 269-F(f): Change “1030” to “103D” on the last line.

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



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Ameresco.com

TESTIMONY TO THE COMMITTEE ON WAYS AND MEANS

10:02 AM, March 28, 2025

Conference Room 211 & Via Videoconference

HB 974 SD1

Chair Dela Cruz, Vice Chair Moriwaki and Members of the Committee,

Ameresco **strongly supports** HB 974 SD1, 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.

As currently drafted, HB 974 SD1 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.

Thank you for the opportunity to provide this testimony in support of HB 974 SD1.



Email: communications@ulupono.com

SENATE COMMITTEE ON WAYS AND MEANS
Friday, March 28, 2025 — 10:02 a.m.

Ulupono Initiative supports HB 974 HD 1 SD 1, Relating to Energy.

Dear Chair Dela Cruz and Members of the Committee:

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 SD 1, which requires the Department of Budget and Finance to enter into step-in agreements for payment obligations arising under certain power purchase agreements (PPAs); 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; and 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 essential for achieving Hawai'i's clean energy objectives, enhancing energy security, and protecting ratepayers from disruptions or increased costs due to utility credit concerns. This legislation is necessary and beneficial in that it:

- Facilitates the transition to renewable energy;
- Addresses energy reliability and affordability;
- Provides financial stability amidst utility credit challenges;
- Leverages existing revenue streams; and
- Strengthens energy security and diversification.

However, based on recent updates in the committee report, we respectfully offer the following recommendations to further strengthen the bill:

- Because the latest version of the bill has broadened the scope of PPAs covered, it is currently unclear what specific termination costs may be associated with each PPA. Therefore, we recommend amending the bill to explicitly limit termination costs to compensatory-type costs only, excluding punitive damages that may exist in existing PPAs.
- Regarding the provision that requires the State to conduct due diligence prior to stepping into PPAs, we agree this is a prudent measure. However, we strongly suggest additional language clarifying the State's obligations in cases where due diligence results in unfavorable findings. Specifically, clarification is needed to determine the next steps or obligations of the State, given the ongoing payment obligations for power delivered.

Investing in a Sustainable Hawai'i

- Finally, there appears to be potential ambiguity between clauses restricting the electric utility's role to that of a managerial agent and later clauses authorizing the Public Utilities Commission (PUC) to empower the utility to act as an agent for the State. If this language tension is intentional, we recommend providing additional clarification or explanation to ensure transparent and effective implementation.

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 with the amendments above 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