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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, January 28, 2025
9:30 a.m.
Conference Room 229

On the following measure:
S.B. 137, RELATING TO ELECTRIC UTILITIES

Chair Keohokalole 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 Public Utilities Commission (Commission) to impose certain conditions of approval on any order approving, in whole or in part, an application for the proposed acquisition, merger, or consolidation of an electric utility company by an acquiring entity; and (2) establish a process to ensure that when an application for the proposed acquisition, merger, or consolidation of an electric utility company is filed with the Commission by an acquiring entity that is an investor-owned utility, alternative applications submitted by entities that operate under a non-investor-owned utilities ownership model are concurrently reviewed.

The Department appreciates the intent of this measure to preserve key energy laws and regulatory policies that have been developed through the years in the State's

ongoing efforts to transition from fossil fuels to renewables given the uncertainties regarding the electric utility serving the majority of the State (i.e., the Hawaiian Electric Company or HECO). The Department shares the concerns expressed in the measure.

Nonetheless, while the parameters expressed in the measure to preserve the renewable portfolio standards (RPS) laws and benchmarks and the performance-based regulation framework for which HECO is currently operating under, to name a few, if reorganization of HECO results in the acquisition, merger, or consolidation of HECO leading to a change in management and control, the Department believes that such a measure may not be needed. Any changes in the current energy laws including those regarding RPS would require legislative review and passage in the future as it currently does. In addition, the Commission's broad general and regulatory authority over all public utilities, including electric utilities serving the State, is not in question. While the Department views this measure as providing guidance to the Commission and expressing the Legislature's preference for non-investor-owned utility ownership, the change in the law as set forth in this measure may have unintended consequences that cannot be foreseen at this time and may hamper the Department's ability to advocate for ratepayers and the public interest in the future.

Thank you for the opportunity to testify on this bill.



Email: communications@uluPono.com

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Tuesday, January 28, 2025 — 9:30 a.m.

UluPono Initiative supports SB 137, Relating to Electric Utilities.

Dear Chair Keohokalole and Members of the Committee:

My name is Mariah Yoshizu, and I am the Government Affairs Associate 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 and clean transportation choices, and better management of freshwater resources.

UluPono strongly supports SB 137, which seeks to strengthen the certain aspects of regulatory oversight of electric utility acquisitions, mergers, or consolidations and/or bankruptcies in Hawai'i. This bill represents a crucial step in ensuring that our state's ambitious renewable energy goals remain safeguarded and that the interests of Hawai'i's electric utility customers and residents are prioritized. These critical policy goals and outcomes provide lasting benefits to utility customers not only in the transition to renewables but also in supporting lower bills for customers.

As Hawai'i continues to transition from fossil fuels to renewable energy, we have achieved significant milestones, such as the 100% Renewable Portfolio Standards (RPS) and Performance-Based Regulation frameworks. However, the potential for mergers or acquisitions involving investor-owned utilities, which may arise from the Maui wildfires or other circumstances, poses a risk of backsliding or undermining these advancements to the detriment of utility customers. SB 137 addresses this risk by mandating that the Public Utilities Commission (PUC) impose conditions of approval for such transactions to preserve and strengthen our progress toward sustainability. This legislation provides critical safeguards, including:

1. **Preserving Renewable Energy Statutory Mandates and Policy Goals:** The bill ensures that acquiring entities cannot propose or support changes that would dilute the RPS or delay the state's clean energy deadlines. This protects the integrity of Hawai'i's transition to renewable energy for the benefit of utility customers.
2. **Protecting Performance-Based Regulation:** By preventing the weakening of performance-based mechanisms, the bill ensures that utilities remain accountable for improving service quality and cost control while advancing renewable energy integration.

Investing in a Sustainable Hawai'i

3. **Enabling the Evaluation of Alternative Ownership Models:** Establishing a process for considering offers from cooperative utilities or other similar types of non-investor-owned utility applications provides an opportunity for community-based solutions to emerge during a time of purchase or sale.
4. **Maintaining Existing Agreements:** Provisions to uphold current power purchase agreements safeguard the investments and contributions of independent power producers who play a vital role in expanding our renewable energy capacity.

In addition to these key protections, the bill fosters transparency and fairness in the regulatory process. It signals Hawai'i's unwavering commitment to a clean energy future, ensuring that utility ownership changes do not compromise public interest or environmental sustainability. By enacting SB 137, the Legislature will reaffirm its dedication to securing a resilient, reliable, and sustainable energy system for Hawai'i. Ulupono Initiative urges legislators to pass this measure to protect the progress we as a state have achieved and to ensure that our renewable energy goals remain on track.

Thank you for the opportunity to testify.

Respectfully,

Mariah Yoshizu
Government Affairs Associate

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Testimony of the Public Utilities Commission

To the
Senate Committee on
Commerce and Consumer Protection

January 28, 2024
9:30 a.m.

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

Measure: S.B. No. 137
Title: RELATING TO ELECTRIC UTILITIES.

Position:

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

Comments:

The Commission appreciates the intent of this measure to safeguard the public interest by requiring that the Commission impose certain conditions of approval on any order approving, in whole or in part, an application for a proposed acquisition, merger, or consolidation of an electric utility by an acquiring entity. The Commission also appreciates the intent of this measure to encourage diversity in utility ownership models by establishing a process to ensure that when an application for the proposed acquisition, merger, or consolidation of an electric utility company is filed with the Commission by an acquiring entity that is an investor-owned utility, alternative applications submitted by entities that operate under a non-investor-owned utilities ownership model are concurrently reviewed.

The Commission notes that preemptively prescribing certain conditions of approval on any order approving, in whole or in part, an application for a proposed acquisition, merger, or consolidation of an electric utility by an acquiring entity may have the unintended consequence of discouraging or disincentivizing a potential acquiring entity from presenting to the Commission an acquisition, merger, or consolidation application that might be in the public interest. Nevertheless, the Commission is encouraged that S.B. 137 provides the Commission with the flexibility to "consider or impose" those conditions of approval rather than simply mandate the Commission impose those conditions of

approval because the Commission would still retain the ability to determine whether the imposition of those prescribed conditions is just and reasonable and in the public interest.

In any case, the Commission is committed to complying with its statutory duties in the exercise of the Commission's power and authority regardless of whether this Committee chooses to move S.B. 137 forward or not. These statutory duties include, but are not limited to, holding any electric utility company accountable for compliance with the renewable portfolio standards set forth in HRS § 269-92(a) and establishing and maintaining the performance incentive and penalty mechanisms for electric utility rates pursuant to HRS § 269-16.1.

Finally, while the Commission has no concerns or objections regarding the temporary suspension of an application by an acquiring entity that is an investor-owned utility for the acquisition, merger, or consolidation of an electric utility company, the Commission is concerned with S.B. 137's directive that the Commission concurrently review any proposed applications by acquiring entities that operate under a non-investor-owned utilities ownership model with the application by an acquiring entity that is an investor-owned utility. Although S.B. 137 provides acquiring entities that operate under a non-investor-owned utilities ownership model an opportunity to present their own applications for consideration to the Commission concurrently with an application presented by an acquiring entity that is an investor-owned utility, there is no requirement that any such applications have been presented to or accepted by the electric utility company prior to their submission to the Commission. The Commission may not have the authority to approve a proposed acquisition, merger, or consolidation of an electric utility company that the electric utility company has not agreed to.

The Commission offers that should the Committee wish to move this measure forward, it would be more appropriate to direct an electric utility company that is the subject of an application for a proposed acquisition, merger, or consolidation by an acquiring entity that is an investor-owned utility to demonstrate that the electric utility company has first solicited bids from acquiring entities that operate under a non-investor-owned utilities ownership model, and note whether any acquiring entities that operate under a non-investor-owned utilities ownership model submitted bids and the reasons why such bids were or were not acceptable, in any application to the Commission requesting authorization for a proposed acquisition, merger, or consolidation of the electric utility company. Should an acquiring entity that operates under a non-investor-owned utilities ownership model present an acceptable bid to the electric utility company, the electric utility would then present to the Commission those acceptable bids concurrently with an application for a proposed acquisition, merger, or consolidation by an acquiring entity that is an investor-owned utility.

Thank you for the opportunity to testify on this measure.



INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1260 EMPOWERING THE PACIFIC

THIRTY-THIRD LEGISLATURE, 2025, Committee on Commerce and Consumer Protection

HEARING DATE: Tuesday, January 28, 2025

TIME: 9:30 a.m.

PLACE: Senate Committee Room 229

RE: Senate Bill 137- SUPPORT with Amendments

Aloha Honorable Chair Keohokalole, Vice-Chair Fukunaga, and Committee Members;

The International Brotherhood of Electrical Workers Local 1260 (IBEW 1260) would like to offer the following testimony in SUPPORT of Senate Bill 137 with proposed amendments (attached).

IBEW Local 1260, is comprised of approximately 3,000 members throughout Hawaii and Guam and consists of a diverse and highly-skilled workforce that supports the electric utility infrastructure across our state as well as government service contracts and broadcasting. It's our duty to serve and to protect the well-being of our members, but beyond that, it is incumbent upon all of us to serve and protect the well-being of our island home.

SB137 requires the PUC to impose certain conditions of approval on any order approving, in whole or in part, an application for the acquisition, merger, or consolidation of an electric utility company; and establishes a process to ensure that if an investor-owned utility files such an application, due consideration is concurrently given to a non-investor-owned utility.

Local headlines consistently highlight the many challenges of living in Hawaii, ranging from the high cost of living, to limited economic opportunities, housing challenges, and quality of life concerns. A 2024 ALICE report noted that 53% of residents under 35 years old are below the ALICE threshold, threatening Hawaii's future workforce. Moreover, a U.S. Census Bureau report indicates a steady decline in Hawaii's population over a recent four-year period.

Hawaii's fragile economy and shrinking workforce, coupled with the sharp increase in demand for qualified and skilled electrical utility workers needed to pursue the State's renewable energy goals, as well as upgrade, maintain, and develop Hawaii's electric utility infrastructure to ensure safe, reliable service to the community, make it imperative to protect Hawaii's electric utility workforce in the event of an acquisition, merger, or consolidation.

IBEW Local 1260 respectfully submits the attached proposed amendments to Senate Bill 137, seeking to ensure that Hawaii's electric utility workforce continues to serve the needs of our communities, and request that they be included as an SD1.

Mahalo for the opportunity to testify on this measure.



INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1260 EMPOWERING THE PACIFIC

**Proposed Amendments to Senate Bill 137; Related to Electric Utilities
Offered for consideration by: IBEW Local 1260**

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

SECTION 1. The legislature finds that the State's ongoing energy transition from fossil fuels to renewable energy has been driven and supported by certain key energy laws and regulatory policies that were established after years, if not decades, of continued advocacy efforts. These laws and regulatory policies include, among others, the renewable portfolio standards laws established under part V of chapter 269, Hawaii Revised Statutes; the performance-based regulation framework created by the public utilities commission for electric utilities; and the encouragement and oversight of renewable power purchase agreements by the public utilities commission, which are contractual agreements entered into by electric utilities and independent power producers for, among other things, the development and production of new utility-scale renewable energy projects.

Notwithstanding, the legislature finds that a bankruptcy or reorganization proceeding involving an electric utility company in the State could result in the acquisition, merger, or consolidation of that electric utility company with an acquiring entity that could ultimately lead to a change in management and control. In a worst-case scenario, the acquiring entity may seek to weaken, alter, or reverse those key state energy laws, policies, frameworks, and agreements that have greatly contributed to the State's progress towards meeting its renewable energy goals, or reduce the electric utility's capacity to maintain a qualified and knowledgeable workforce with the ability to support and pursue Hawaii's renewable energy goals, as well as to ensure safe, efficient, reliable, and continuous electric utility service to Hawaii consumers and communities.

Accordingly, the purpose of this Act is to:

- (1) Require the public utilities commission to consider or impose certain conditions of approval on any order approving, in whole or in part, an application for the proposed acquisition, merger, or consolidation of an electric utility company by an acquiring entity; and
- (2) Establish a process to ensure that when an application for the proposed acquisition, merger, or consolidation of an electric utility company is filed with the public utilities commission by an acquiring entity that is an investor-owned utility, alternative applications from entities that



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operate under a non-investor-owned utilities ownership model may be concurrently submitted and reviewed.

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

"§269-A Acquisition, merger, or consolidation of electric utility companies; conditions of approval. (a) Notwithstanding the provisions of sections 269-7.5, 269-18, and 269-19, in any public utilities commission order approving, in whole or in part, an application for the proposed acquisition, merger, or consolidation of an electric utility company by an acquiring entity, the public utilities commission shall consider or impose the following conditions of approval established in this section, including any other conditions it deems necessary.

(b) Through at least the year 2040, the acquiring entity shall not propose or support any change or amendment that may have a material adverse effect on the renewable portfolio standards laws established under part V of chapter 269, including any change or amendment that:

(1) Is contrary to the purpose of the renewable portfolio standards laws;

(2) Reduces the renewable portfolio standards benchmark percentage requirements established for net electricity sales and generation pursuant to section 269-92;

(3) Extends the deadline by which the electric utility company shall comply with the State's renewable portfolio standards; or

(4) Seeks to reduce, curb, or limit the authority of the public utilities commission to penalize an electric utility company that fails to meet the renewable portfolio standards, pursuant to section 269-92 or other commission order.

(c) The acquiring entity shall not propose or support, directly or indirectly, the termination of any existing performance-based regulation framework established for the electric utility company by the public utilities commission, or any change or amendment that may have a material adverse effect to the existing performance-based regulation framework, including any change or amendment that:

(1) Reduces the length of any existing or planned future multi-year rate plan to a period of less than five years;



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(2) Uses a traditional cost-of-service rate case, unless the public utilities commission has previously entered an order directing the use of a traditional cost-of-service rate case;

(3) Modifies the existing annual revenue adjustment formula established for the electric utility company by the public utilities commission; or

(4) Modifies existing accelerated performance incentive mechanisms in a manner that is contrary to the purpose of the mechanism or reduces the net amount of renewable energy procured by the electric utility company;

provided that nothing in this subsection shall limit any re-opener mechanism established for the electric utility company by the public utilities commission.

(d) The acquiring entity shall not terminate any existing and valid power purchase agreement between the electric utility company and an independent power producer of energy services based solely on the completion of the acquisition, merger, or consolidation; provided that nothing in this subsection shall prevent the termination of a contractual agreement as permitted by its terms, subject to approval from the public utilities commission. The acquiring entity shall not attempt to renegotiate any material provisions of any existing and valid power purchase agreement including but not limited to the established payment rates for energy or energy storage or other commercial terms; provided that nothing in this subsection shall prevent the amending of a contractual agreement as may be permitted under its terms, subject to approval by the public utilities commission. Before the completion of the acquisition, merger, or consolidation of the electric utility company, the acquiring entity shall not unduly influence the terms of any power purchase agreement that is under negotiation between the electric utility company and an independent power producer of energy services.

(e) The acquiring entity shall assume and be bound by the terms and conditions of any existing collective bargaining agreement in place at the time of the acquisition, merger, or consolidation, as it applies to covered employees.

(f) The acquiring entity shall retain all covered employees, and shall not induce or cause a reduction in force, or terminate a covered employee, other than for cause consistent with any applicable collective bargaining agreement.



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(g) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the valid provision or application.

~~(e)~~(h) As used in this section:

"Acquiring entity" means the entity that acquires all or some classes of an electric utility company's interests in an interest exchange, including but not limited to interest in any road, line, plant, system, or other real or personal property necessary for the performance of the electric utility's duties to the public or any franchise or permit, or right thereunder.

"Covered employee" means an individual who is employed by and party to a collective bargaining agreement with an electric utility company immediately prior to an acquisition, merger, or consolidation, approved by the public utility commission, of such electric utility company by an acquiring entity.

"Electric utility company" means a public utility as defined in section 269-1, for the production of, conveyance, transmission, delivery, or furnishing of power.

§269-B Acquisition, merger, and consolidation of electric utility companies; investor-owned acquiring entities; consideration of alternative applications. (a) The public utilities commission shall, upon receiving an application for the acquisition, merger, or consolidation of an electric utility company, commence a regulatory proceeding to review the application. Notwithstanding the provisions of sections 269-7.5, 269-18, and 269-19, upon commencement of the regulatory proceeding to review the application, if the application proposes the acquisition, merger, or consolidation of an electric utility company by an acquiring entity that is an investor-owned utility, the public utilities commission shall, for a period of one hundred eighty days, suspend its review of the application and immediately establish a process, subject to the requirements of this section, for the consideration of alternative applications from acquiring entities that operate under a non-investor-owned utilities ownership model.

(b) If bona fide applications are submitted to the public utilities commission by acquiring entities that operate under a non-investor-owned utilities ownership model for the acquisition, merger, or consolidation of the electric utility company within the one hundred eighty day period, the public utilities commission shall review the applications concurrently. The electric utility



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company shall have no obligation to affirmatively state its position in support of or in opposition to any pending application.

(c) Notwithstanding any law or rule to the contrary, the public utilities commission shall have the power to consolidate its review of all submitted applications pursuant to this section.

(d) This section shall not apply to the acquisition of a not-for-profit enterprise that is not owned by shareholders.

(e) For the purposes of this section:

"Acquiring entity" has the same meaning as defined in section 269-A.

"Electric utility company" means a "public utility" as defined in section 269-1, for the production of, conveyance, transmission, delivery, or furnishing of power.

"Non-investor-owned utilities ownership model" means a member-owned cooperative utility or any not-for-profit enterprise that is not owned by shareholders."

SECTION 3. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.