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FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT

WRITTEN ONLY
TESTIMONY BY LUIS P. SALAVERIA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEES ON ENERGY AND INTERGOVERNMENTAL
AFFAIRS AND COMMERCE AND CONSUMER PROTECTION
ON
SENATE BILL NO. 1501

February 11, 2025
9:30 a.m.
Room 229 and Videoconference

RELATING TO ENERGY

The Department of Budget and Finance (B&F) offers comments on this bill.

Senate Bill No. 1501 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 entered into from an electric utility and its regulated subsidiaries and independent power producers in the event of a default; 2) establish the Power Purchase Costs Trust Fund (PPCTF) within the State Treasury for B&F to collect revenues and make payments under a step-in agreement; 3) require the Public Utilities Commission (PUC) to authorize a power purchase costs reserve fee to be collected and maintained by the electric utility and transmitted to the PPCTF in the event of a step-in agreement; and 4) authorize B&F to 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 to effectuate a step-in agreement.

It is unclear whether the proposed PPCTF would be self-sustaining even after the deposit of surcharge revenues from power purchase costs reserve fees given the potential overall financial state of the electric utility should a default occur.

B&F also echoes the concerns raised by the Department of the Attorney General regarding the following features of the bill:

- The bill mandates B&F to enter into step-in agreements with no discretion to determine whether doing so is in the best interests of the State under the circumstances.
- The bill mandates PUC to authorize power purchase costs reserve fee surcharges with no discretion to determine whether doing so is in the best interest of the State and the ratepayers under the circumstances.
- The reserve account and surcharge of up to 15% of the utility's forecasted monthly power purchase costs proposed on page 18, line 19, through page 19, line 7, of the bill could provide an additional revenue source to the utility at the expense of ratepayers.
- The bill may create liability on the part of B&F and the State. Prior to any significant statutory amendments, studies should be carried out to determine the appropriate contingencies and policies necessary to protect the State and its interests as it continues its transition onto clean energy.

Thank you for your consideration of our comments.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:
S.B. NO. 1501, RELATING TO ENERGY.

BEFORE THE:
SENATE COMMITTEES ON ENERGY AND INTERGOVERNMENTAL AFFAIRS
AND ON COMMERCE AND CONSUMER PROTECTION

DATE: Tuesday, February 11, 2025 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 229

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

Chairs Wakai and Keohokalole and Members of the Committees:

The Department of the Attorney General provides the following comments regarding this bill.

This bill seeks to have the State, pursuant to step-in agreements, make payments to independent power producers (IPP) for purchased power in the event of a default by an electric utility. A step-in agreement is an agreement that allows a third party, the State, to "step-in" and take over certain obligations under the agreement if an electric utility fails to meet its obligations under the agreement, for example, failing to make payments to an IPP. The step-in agreement is intended to provide continuity of payments to an IPP. Further, this bill establishes the statutory framework to effectuate this program, including establishing the Power Purchasing Costs Trust Fund to deposit moneys received from ratepayers.

We note that the bill proposes several features that could adversely impact the State and its residents. The following list highlights those features that we believe are material for the Legislature to consider in its assessment of the bill.

1. ***Elimination of discretion by the State:*** The bill ***requires*** the Department of Budget and Finance (B&F) to enter into "step-in agreements" with the IPPs. Under a step-in agreement, B&F is required to make payments for power purchase costs owed by an electric utility to an independent power producer in

the event of a default by the electric utility under its power purchase agreement with the IPP. "The department **shall** enter into a step-in agreement with an obligee that **requires** the department to make prompt and full payments for power purchase costs owed by an electric utility to the obligee in the event of a default." See page 9, lines 12-16 (emphases added).

2. ***Elimination of discretion by the Public Utilities Commission:*** The bill **requires** that the Public Utilities Commission (PUC) authorize a surcharge to be included in electric utility customer bills and that the PUC allows monthly rate adjustments to become effective upon a filing by the electric utility with the PUC. "By August 1, 2025, the public utilities commission **shall** authorize a surcharge proposed by an electric utility, referred to as the power purchase costs reserve fee, the revenue from which shall be accorded the same treatment as revenue from power purchase charges as described in section 269-B(g). The power purchase costs reserve fee may be included in the purchased power adjustment clause on customer bills." See page 18, lines 12-18.

3. ***Creation of a Reserve Account Equates to an Additional Source of Revenues for an Electric Utility at the Cost of the Customers:*** The bill provides for the establishment of a reserve account that is funded through a surcharge to be included in electric utility customer bills. The bill proposes a surcharge in an amount not to exceed fifteen percent of the utility's forecasted monthly power purchase costs of all power purchase agreements (see page 18, line 19, to page 19, line 7) subject to a "step-in agreement" in the case that the utility has a shortfall in revenues based on an overestimate of revenues by the utility plus an amount sufficient to recover costs related to maintenance of the reserve account and any applicable taxes and fees. Currently, any shortfall in the utility's forecasted monthly power purchase costs is currently covered by the utility. Establishing a reserve account and implementing a surcharge (paid by the customers) to fund such an account provides an additional source of revenue for the utility, at the expense of its customers, which additional revenue source can

be used by the utility to fulfil its payment obligations in case the utility forecasts incorrectly.

4. ***Potential State Liability.*** We need to ensure that any obligation of B&F pursuant to a step-in agreement does not create or result in liability to B&F and the State. For example, the bill proposes that title to the revenues from power purchase charges (paid by the customers) and the subsidy for the reserve account after a default by the utility under a power purchase agreement resides with B&F. See page 11, line 18, to page 12, line 12. Additionally, a step-in agreement obligates B&F to make payments to an IPP after a default by the utility under a power purchase agreement. See page 9, line 12, to page 10, line 13. In all circumstances, we need to ensure that any default or failure to make payments by B&F pursuant to the terms of a step-in agreement does not result in any recourse by the utility or an IPP to any money of the State other than the revenues derived from power purchase charges and the subsidy for the reserve account collected and on deposit in the trust fund established by B&F.

We respectfully ask the Committee to consider our comments.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



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Testimony of the Public Utilities Commission

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

Tuesday, February 11, 2025
9:30 a.m.

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

Measure: S.B. No. 1501
Title: RELATING TO ENERGY.

Position:

The Public Utilities Commission ("Commission") supports S.B. 1501 and offers the following comments for consideration.

Comments:

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

The Commission is aware of the concerns surrounding Independent Power Producer ("IPPs") financing cost increases and market uncertainty created by Hawaiian Electric's non-investment grade credit rating. The Commission closely monitors the Stage 3 Request for Procurement process (Docket No. 2017-0352) and meets regularly with the Independent Observer on the status of all projects. IPPs in their ongoing Power Purchase Agreement ("PPA") negotiations with Hawaiian Electric have sought higher prices than previous rounds to offset their increased financing costs caused by Hawaiian Electric's PPA default risk. Hawaiian Electric in response has sought to find ways to accommodate IPPs to balance ratepayer electricity costs and developer economics. IPPs bidding into the forthcoming Integrated Grid Plan RFP ("IGP RFP"), which is under review by the Commission for approval (Docket No. 2024-0258), will face these same financing cost challenges unless Hawaiian Electric's credit rating improves.

This measure may provide a means to reduce the default risk costs imposed on IPPs by their potential lenders.

Furthermore, the Step-in Agreement will ensure that IPPs continue to be paid for the renewable energy they will produce should the electric utility trigger a default. In the worst-case scenario, if IPPs are not paid for their renewable energy, the IPP may shut down operations and would result in a loss of that renewable energy source.

The Commission respectfully defers to the Department of Budget and Finance on the implementation of other portions of the measure.

Thank you for the opportunity to testify on this measure.



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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
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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 Energy and Intergovernmental Affairs
And
Senate Committee on Commerce and Consumer Protection
Tuesday, February 11, 2025
9:30 a.m.
Conference Room 229

On the following measure:
S.B. 1501, RELATING TO ENERGY

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

My name is Michael Angelo, and I am the Executive Director of the Department of Commerce and Consumer Affairs (Department) Division of Consumer Advocacy. The Department offers comments on this bill.

The purpose of this bill is to: (1) allow the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements; (2) establish the Power Purchasing Costs Trust Fund; (3) establish that revenues from on-bill charges for power purchase agreements and accompanying reserves shall be held in trust by the State, and that independent power producers (IPPs) shall hold a beneficial interest in the revenue and reserve 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, payment, and managing agent of the Department of Budget and Finance in the service of performing step-in agreements.

As discussed in greater detail below, the Department largely supports this legislation because it *may* enable lower energy costs than would be possible without the legislation, and *may* facilitate incorporating more renewable energy onto the electrical system by addressing key concerns raised by IPPs of renewable energy projects regarding their ability to obtain financing for their projects because of lenders' concerns that Hawaiian Electric would be allowed to stop paying IPPs for the energy that they provided to Hawaiian Electric.¹ However, the Department believes that the legislation can achieve the above goals and address lenders' concerns without increasing customer rates to pay for a reserve fund that is intended to make up for a shortfall in the event that a step-in is triggered and the existing on-bill surcharge mechanism paid by electric utility customers under collects for the month. The Department also notes the points raised in the testimonies of the State's Attorney General's office and Department of Budget and Finance as considerations for the committee.

The Department notes that the proposed Hawaii Revised Statutes (HRS) § 269-B, § 269-C, § 269-D, and § 269-F together form the key components of the legislation because they enable the State of Hawaii, through the Department of Budget and Finance, to step-in and make payments to independent power producers if the electric utility or its successor were to default on its payment obligation to IPPs by using revenues that would otherwise be collected by the electric utility and then distributed to the IPPs and provide additional assurances to IPPs that they will be compensated.

The Department has concerns with proposed HRS § 269-E, which is to serve as a cushion if revenues collected through the existing power purchase surcharge were to fall short of what was to be paid to the IPPs in a given month if a step-in were to be needed. The Department respectfully posits that the amount of reserve could be significantly below the fifteen percent of the forecasted monthly power purchase costs if not zero. The Department therefore recommends that:

- The proposed HRS § 269-E be deleted in its entirety.

¹ See e.g., Ameresco's Written Testimony to the Committee on Energy & Environmental Protection on House Bill 974, which is the companion legislation to Senate Bill 1501.

- In the alternative, if the proposed HRS § 269-E is not deleted, incorporate language that:
 - Significantly reduces the reserve amount below the proposed 15%
 - Specify that once the reserve amount has been attained, no additional charges will be collected from ratepayers toward the reserve amount.
 - State that any interest earned from the reserve amount be refunded to ratepayers in a timely manner at regular intervals (e.g., annually) or used toward resilience investments.
 - Not allow additional administrative fees, taxes, etc. to be collected beyond what would be obtained under the percentage amount.

Thank you for the opportunity to testify on this bill.

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

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

February 11, 2025; 9:30 a.m.
Conference room 229 & Videoconference

RE: SB 1501 Relating to Energy – In Support

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

Plus Power appreciates this opportunity to submit testimony in support of SB 1501, which allows the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements and establishes the Power Purchasing Costs Trust Fund.

There is a need to replace retiring fossil fuel units. SB 1501 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



Email: communications@uluPono.com

SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION
& ENERGY AND INTERGOVERNMENTAL AFFAIRS
Tuesday, February 11, 2025 — 9:30 a.m.

UluPono Initiative supports SB 1501, Relating to Energy.

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

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 supports SB 1501, which allows the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements. This bill is critical to advancing Hawai'i's clean energy goals, ensuring energy reliability, and protecting utility customers from potential disruptions or increased costs.

The following points highlight why this legislation is necessary and beneficial:

1. Facilitating the Transition to Renewable Energy

The bill directly supports Hawai'i's policy goals, including achieving 100% renewable energy by 2045 and advancing a net-negative emissions economy. By providing assurances to independent power project developers and their financiers through a step-in agreement, the bill encourages continued investment in clean energy projects, even amidst the utility's lower credit rating. This will enable Hawai'i to retire aging and costly fossil-fuel plants and replace them with affordable, sustainable alternatives. In addition, this bill is intended to help ratepayers by continuing to support the addition of low-cost renewables and should not act as a financial boon for the utility.

2. Addressing Energy Reliability and Affordability

With many generating units in Hawai'i nearing retirement, the urgency of procuring replacement resources cannot be overstated. A step-in agreement, such as the one proposed, should help to ensure that independent power producers remain confident in the financial viability of their projects. This prevents potential project cancellations or escalated costs due to credit concerns, ultimately protecting customers from issues with reliability and affordability.

3. Providing Financial Stability Amidst Utility Credit Challenges

Following the tragic Maui wildfires, concerns about the financial strength of Hawaiian

Investing in a Sustainable Hawai'i

Electric Company and its subsidiaries have raised risks of increased prices or project cancellations. The proposed step-in agreements allow the State to act as a limited credit backstop, ensuring payment obligations are met. Importantly, these agreements do not constitute contingent liabilities under the State Constitution, protecting public finances while addressing credit concerns.

4. Leveraging Existing Revenue Streams

The bill establishes a dedicated fund, capitalized by on-bill charges, for power purchase agreements, to fulfill State-backed payment obligations. This structure ensures that no additional taxpayer funds are required, as revenue from power purchase charges will be utilized to reimburse the State for any payments made under step-in agreements.

5. Strengthening Energy Security and Diversification

By facilitating the development of local renewable energy resources, this bill reduces Hawai'i's dependence on imported fossil fuels, enhancing energy security and resilience against global market fluctuations.

In conclusion, this bill is a forward-thinking measure that balances the State's renewable energy aspirations with the practical needs of maintaining reliability, affordability, and financial prudence. It provides the necessary assurances to independent power producers to continue developing critical clean energy infrastructure without undue delays or costs. Ulupono respectfully urges the committee to pass this bill to secure a sustainable and resilient energy future for Hawai'i.

Thank you for the opportunity to testify.

Respectfully,

Mariah Yoshizu
Government Affairs Associate



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

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

Tuesday, February 11, 2025; 9:30 a.m.
Conference room 229 & Videoconference

RE: SB 1501 – Relating to Energy – In Support

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

My name is Wren Wescoatt, Vice President of Development for Longroad Energy (Longroad), and I am testifying in support of SB 1501. 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 SB 1501 and ask that you give the measure your favorable consideration.

Mahalo,

A handwritten signature in black ink, appearing to read "Wren W. Wescoatt", is written over a horizontal line.

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



February 6, 2025

Via Electronic Submittal

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

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

Tuesday, February 11, 2025, 9:30 a.m.
Conference Room 229 & Videoconference

RE: SB 1501 – Relating to Energy - In Support

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

Clearway Energy Group LLC ("Clearway") supports SB 1501, 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.

Clearway appreciates that SB 1501 is intended to solve this problem 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. The details of this mechanism are important, and we are still reviewing aspects of the proposal to assess how it would affect project financing. We look forward to continued discussion on this measure.

Thank you for the opportunity to testify on this matter.

Nicola Park
Director, Hawaii
Clearway Energy Group



**Hawaiian
Electric**

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

**SB 1501
Relating to Energy**

Tuesday, February 11, 2025
9:30AM
State Capitol, Conference Room 229

Rebecca Dayhuff Matsushima
Vice President, Resource Procurement
Hawaiian Electric

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

My name is Rebecca Dayhuff Matsushima and I am testifying on behalf of Hawaiian Electric in **strong support** of SB 1501, Relating to Energy, with proposed amendments for the Committees' consideration.

SB 1501 would provide significant support to Hawaiian Electric's customers by helping to avoid higher-cost contracts with independent power producers ("IPPs") and helping to ensure the successful development of new renewable energy projects, thereby promoting system reliability.

Project developers responding to Hawaiian Electric's most recent Request for Proposals have indicated that the company's current sub-investment-grade credit rating raises concerns from their financing partners about the assurance of payments to be made by Hawaiian Electric. 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.

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. Rolling power outages on O'ahu and Hawai'i Island last year were attributed to unexpected outages of aging generators and insufficient battery energy storage to safely maintain power demands. New generation projects will add much needed renewable energy sources that will help maintain system reliability. If new generators are not added, outage durations could increase to multiple hours or even several days. New projects are necessary to supplement the power supply and replace older fossil fuel generators that have become less reliable over time and may need to be shut down altogether.

Additionally, new renewable energy projects are needed to help meet the State's Renewable Portfolio Standards 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 renewable energy goals, 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 power purchase agreements for new projects. The bill provides for the department of budget and finance to enter into a "step-in" agreement to pay those IPPs in the unlikely event that the utility defaults. The department would make those payments using specific revenues collected from utility customers, consistent with existing law under which the utility recovers 100% of the costs of power purchase agreements in retail rates. The bill explicitly states that the State's credit and funds would not be used and that all payment obligations for the covered power purchase agreements would be paid solely from customer revenues designated to pay such power purchase agreement costs.

To ensure that sufficient funds are available, this bill also establishes a reserve account funded by a reserve fee. We estimate that a typical 500 kWh residential customer would pay between 8 and 16 cents per month for about 29 months to fund the reserve account. 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 per month over the term of their contracts. The reserve fee will be returned to customers once the utility regains its investment-grade credit rating. The reserve account would not create an additional source of revenue for Hawaiian Electric, as it would only be used to cover a shortfall in collections.

Hawaiian Electric strongly believes in the benefits that this solution can provide to customers. Based on feedback from the Attorney General's office, Hawaiian Electric would like to respectfully suggest additional improvements to this bill, as shown in the attached redline. These improvements principally seek to clarify the bill's language so as to both further minimize risk to the State and strengthen the assurance that IPPs will receive payment. For example, one of the proposed changes is to revise the definition of "step-in agreement" to clarify that, "the department's payment obligation under such step-in agreement is limited solely to the revenues from power purchase charges and reserve fees collected in connection with covered power purchase agreements."

Hawaiian Electric believes that the customer benefits provided by this bill far outweigh the costs imposed. Given current conditions, Hawaiian Electric also believes that this bill offers the best solution to address developers' financing concerns. Accordingly, Hawaiian Electric strongly supports SB 1501 with proposed amendments. Thank you for this opportunity to testify.

A BILL FOR AN ACT

RELATING TO ENERGY.

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

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

The procurement of replacement clean energy resources by a certain investor-owned electric utility and its electric utility subsidiaries is ongoing in its ~~stage~~Stage 3 request for proposals and further anticipated in its first Integrated Grid Planning request for proposals. These requests for proposals

1 ~~implement~~set forth energy plans that ~~are~~have been developed
2 through extensive engagement with local stakeholders and
3 communities and reviewed and approved by the public utilities
4 commission. The legislature finds that successful procurement
5 of clean energy resources is in the public interest of the
6 State and is necessary to avoid significant detrimental
7 reliability and affordability impacts to electric utility
8 customers.

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

16 The legislature further finds that continued development
17 of clean energy resources requires adequate assurances ~~to~~
18 ~~independent power producers~~ that ~~prompt and full~~ payments for
19 purchased power will be made, ~~irrespective of~~ to independent
20 power producers as and when due by the ~~financial strength of an~~
21 ~~electric~~ utility under power purchase agreements. The current
22 sub-investment-grade status of a certain investor-owned
23 electric utility and its subsidiaries, arising from the tragic
24 events that occurred in the 2023 Maui wildfires, has led

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

11 The legislature further finds that the public interest
12 ~~could~~would be served ~~by the~~ if the department of budget and
13 finance of the State ~~providing limited credit support through~~
14 enters into "step-in agreements, under" with independent power
15 producers, pursuant to which the ~~State~~department of budget and
16 finance will agree to make payments to ~~independent power~~
17 ~~producers in the event of a default in payment by an electric~~
18 ~~utility. These agreements can~~the independent power producers
19 after a failure by the electric utility to make required
20 payments pursuant to the terms of power purchase agreements.
21 The department of budget and finance's obligation to make
22 payments pursuant to the terms of a step-in agreement is
23 limited solely to the revenues associated with a power purchase
24 agreement subject to a step-in agreement. Neither the full

1 faith and credit of the State, nor any other monies of the
2 State, will be pledged for any obligations under a step-in
3 agreement.

4 The legislature finds that step-in agreements may provide
5 assurances ~~to independent power producers that prompt and full~~
6 that payments for purchased power will be made to independent
7 power producers as and when due by the utility under the covered
8 power purchase agreements. The legislature also finds that the
9 intent of this Act is further served by appointing, authorizing,
10 and empowering the electric utility to serve as the billing,
11 collection, payment, and management agent of the ~~State.~~

12 ~~The legislature also finds that the State's obligations in~~
13 ~~connection with step-in agreements do not constitute contingent~~
14 ~~liabilities of the State pursuant to article VII, section 13,~~
15 ~~clause 8, of the Hawaii State Constitution, because the State~~
16 ~~will be vested with all ownership of and title to revenues~~
17 ~~resulting from on-bill charges for power purchase costs, and~~
18 ~~the full faith and credit of the State will not be pledged for~~
19 ~~obligations under these step-in agreements. In the event of a~~
20 ~~default by an electric utility on its payment obligations,~~
21 ~~these revenues would cover all payment obligations of the State~~
22 ~~for electric energy and related products. In the absence of~~
23 ~~default, the electric utility will be authorized to utilize~~
24 ~~these~~ department of budget and finance. Prior to a payment

1 default by the electric utility, the electric utility will be
2 authorized to utilize such revenues to discharge its
3 obligations to pay independent power producers for electric
4 energy and related products. The obligations of the
5 ~~State~~department of budget and finance under this Act are
6 undertaken for a public purpose, namely, the protection of
7 public health, safety, and welfare by supporting the
8 development of clean energy resources that are needed for the
9 reliable provision of electric supply at a reasonable cost.

10 Therefore, the purpose of this Act is to:

11 (1) ~~—Allow~~ Require the ~~State~~department of budget and
12 finance to enter into a step-in ~~agreements for payment~~
13 ~~obligations arising~~agreement with an independent power producer
14 under ~~new power purchase agreements entered into between a~~
15 ~~certain investor-owned electric utility and its regulated~~
16 ~~subsidiaries~~which the department of budget and finance will
17 agree to make payments to the independent power
18 ~~producers~~producer after a failure by the electric utility to
19 make required payments pursuant to the terms of a power
20 purchase agreement;

21 (2) ~~—~~ Establish a trust fund ~~within~~outside the State
22 treasury, that shall be capitalized ~~immediately~~by revenues from
23 a surcharge supporting a reserve account and, in the event of a
24 default ~~to fulfill State-backed payment obligations arising, by~~

1 revenues from power purchase ~~agreements subject to step~~ charges,
2 in ~~agreements;~~

3 ~~(3) Establish that revenues from on-bill charges for~~ each
4 case associated with covered power purchase agreements ~~and~~
5 ~~accompanying reserves,~~ for the fulfillment of payment
6 obligations arising from the power purchase agreement;

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

14 (4) — Appoint, authorize, and empower ~~an~~ the electric
15 utility to serve as the billing, collection, payment, and
16 management agent of the department of budget and finance ~~into~~
17 implement the ~~service~~ requirements of ~~performing step-in~~
18 ~~agreements~~ this part.

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

22 **"PART STEP-IN AGREEMENTS COVERING POWER PURCHASE COSTS**

23 **§269-A Definitions.** As used in this part:

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

3 "Default" means the failure by an electric utility to pay
4 power purchase costs as and when due to an obligee under a
5 covered power purchase agreement, after the expiration of any
6 applicable grace or cure periods and extensions thereto.

7 "Default" does not mean a bankruptcy filing by an electric
8 utility.

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

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

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

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

20 "Investment grade status" means a credit rating for the
21 electric ~~utility's~~utility's senior unsecured long-term debt
22 obligations or an ~~issued~~issuer credit rating for the electric
23 utility (in each case, ~~not supported by~~without regard for
24 gradation within a rating category and without regard for third

1 party credit enhancements) from at least two out of ~~the~~ three
2 of the following:

3 (1) ~~At least~~ BBB- or higher ~~from~~for S&P Global Ratings,
4 or any successor by law;

5 (2) ~~At least BAA3~~ Baa3 or higher ~~from Moody's~~by Moody's
6 Investor Services, Inc., or any successor by law; or

7 (3) ~~At least~~ BBB- or higher ~~from~~by Fitch Ratings, Inc.,
8 or any successor by law.

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

12 "Power purchase agreement" means a contract between an
13 electric utility and a user, owner, or operator of the Hawaii
14 electric system, approved by the public utilities commission,
15 pursuant to which the electric utility agrees to purchase, and
16 the user, owner, or operator of the Hawaii electric system
17 agrees to sell, electric energy and related products produced
18 by plants or facilities that have not provided, sold, or
19 transmitted electricity to the electric utility before July 1,
20 2025.

21 "Power purchase charges" means the on-bill charges,
22 excluding reserve fees, authorized by the public utilities
23 commission to be imposed on and collected from all existing and
24 future customers of an electric utility or any successor for

1 power purchase costs, including without limitation the energy
2 cost recovery clause and the purchased power adjustment clause.
3 ~~"Power purchase charges" do not include any amounts for state~~
4 ~~and county revenue taxes, including any franchise tax, public~~
5 ~~service company tax, and public utility commission fee.~~

6 "Power purchase costs" means costs incurred by an electric
7 utility pursuant to the terms of a power purchase agreement.

8 "Power purchase costs" include, without limitation, all
9 categories of costs recoverable under the energy cost recovery
10 clause and the purchased power adjustment clause under ~~its~~their
11 respective tariffs in effect on July 1, 2025.

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

17 "Reserve fees" means the surcharges described in section
18 269-E(a).

19 "Revenue" means moneys from power purchase charges and
20 reserve fees net of any applicable taxes or government fees,
21 including without limitation, the Franchise Tax, Public Service
22 Company Tax, and Public Utility Commission Fee.

23 "Step-in agreement" means a contract by which the
24 ~~State~~department undertakes ~~an~~the obligation of ~~prompt and full~~

1 payment for power purchase costs owed to an obligee as and when
2 due by an electric utility under a power purchase agreement,
3 following a default, as described in section 269-B(a), provided
4 that the department's payment obligation under such step-in
5 agreement is limited solely to the revenues from power purchase
6 charges and reserve fees collected in connection with covered
7 power purchase agreements.

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

10 **§269-B Step-in agreements.**

11 (a) The department shall enter into a step-in agreement
12 with an obligee that requires the department to make ~~prompt and~~
13 ~~full~~ payments for power purchase costs owed by an electric
14 utility to the obligee in the event of a default. ~~Upon~~ Pursuant
15 to such step-in agreement and upon the default, the department
16 shall make payments to the obligee for power purchase costs
17 with moneys from the fund as and when due by the electric
18 utility under the covered power purchase agreement. ~~The,~~
19 provided however that any such step-in agreement shall ~~not be~~
20 ~~an~~ provide that the department's payment obligation ~~for~~
21 ~~which~~ thereunder shall be solely limited to the revenues from
22 power purchase charges and reserve fees collected in connection
23 with covered power purchase agreements. Each step-in agreement
24 shall include a clause stating that neither the full faith and

1 credit of the State ~~is~~ nor any other monies of the State will be
2 pledged, ~~and an~~ for any obligations pursuant to the terms of
3 the Step-in Agreement. An obligee of a covered power purchase
4 agreement shall have no claim or lien on any ~~revenues or moneys~~
5 of the State, except for those revenues from the power purchase
6 charges and reserve fees attributable to ~~the~~ covered power
7 purchase ~~agreement~~ agreements.

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

20 ~~(e) — Payment by~~ (c) The payment obligation of the
21 department under a step-in agreement shall commence not later
22 than two days after the date of a notice from the department to
23 the electric utility pursuant to section 269-C(a).

1 **(d)** The step-in agreement shall terminate when the credit
2 rating of the electric utility or its successor achieves
3 investment grade status or by express agreement of the obligee,
4 the department, and the electric utility. Upon termination of
5 a step-in agreement, the department shall have no obligations
6 to the electric utility or the obligee upon a default by the
7 electric utility.

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

1 department shall remain obligated to pay the obligee upon a
2 subsequent ~~payment~~ default by the electric utility.

3 (f) The department may impose other conditions, and may
4 include other terms, in a step-in agreement that it deems
5 necessary to implement the requirements of this part; provided
6 that the conditions and terms shall not be inconsistent with
7 the covered power purchase agreement.

8 (g) As consideration for the State entering into the
9 step-in agreement, the electric utility or its successor shall
10 enter into an agreement to assign and transfer ~~any ownership in~~
11 ~~and~~ title to the ~~revenue~~ revenues from power purchase charges
12 and reserve fees attributable to the covered power purchase
13 agreement to the department, ~~and, under the agreement, the~~
14 ~~department shall be deemed~~ to be ~~the sole holder~~ held in trust
15 ~~of all ownership and title to the revenue~~ for the benefit of
16 the obligees under the covered power purchase agreements to the
17 extent of the ~~obliges are~~ amounts owed ~~to such obligees.~~ The
18 ~~revenue~~ revenues shall not be subject to appropriation for any
19 other purpose. ~~The revenue, if held in a depository other than~~
20 ~~the state treasury,~~ The revenues shall be exempt from the
21 requirements of chapters 36 and 38. The electric utility or
22 its successor shall be and remain at all times, even upon the
23 occurrence and during the continuance of a default by the
24 electric utility or its successor, obligated to bill and

1 collect the power purchase charges and reserve fees and to
2 manage the ~~revenue attributable to the agreement~~associated
3 revenues as an agent for the department to effectuate the
4 purposes of this section.

5 (h) ~~—If~~ Prior to default, if any payment obligation of the
6 electric utility under a covered power purchase agreement for
7 power purchase costs becomes owed and due, any ~~ownership of or~~
8 title held by the department in trust to the ~~revenue~~revenues
9 from power purchase charges for the payment obligation owed and
10 due shall divest from the department and vest in the electric
11 utility or its successor at the time the payment by the
12 electric utility or its successor is made to the obligee. Any
13 vesting of revenues to the electric utility ~~when~~at the time of
14 payment ~~obligations are owed and due~~ may be made without
15 appropriation or allotment by the legislature. The department
16 may not otherwise assign, sell, or transfer any ~~ownership of,~~
17 ~~or~~ title to, or any claim or right to, the ~~revenue~~revenues from
18 power purchase charges or reserve fees.

19 (i) To meet the requirements of the State and the public
20 utilities commission as ~~it pertains~~they pertain to electric
21 reliability, energy security, and energy diversification under
22 this chapter and any rules adopted pursuant thereto, ~~an~~the
23 electric utility shall ensure that it maintains sufficient
24 availability of electric energy and related products, to the

1 extent provided by an obligee in accordance with a covered
2 power purchase agreement. The ~~department~~public utilities
3 commission shall exercise its regulatory powers to ensure that
4 ~~an~~the electric utility complies with its obligations under the
5 covered power purchase ~~agreements~~agreement.

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

13 (1) Generate sufficient ~~revenue~~revenues to timely and
14 fully pay amounts when owed and due under covered power
15 purchase agreements; and

16 (2) Ensure that in no event shall revenues fall below the
17 amounts owed and due under covered power purchase
18 agreements by a sum that exceeds the amounts in the
19 reserve established under section 269-E~~;~~ and

20 (3) Recover any applicable taxes and government fees and
21 any incremental administrative costs of the utility or the
22 department incurred to implement the requirements of this
23 part.

1 To achieve the objectives established pursuant to this
2 subsection, unless the public utilities commission otherwise
3 directs, the electric utility may retain ~~revenue~~revenues
4 collected in excess of amounts owed and due under the covered
5 power purchase ~~agreement.~~agreements. The obligations of the
6 electric utility and of the public utilities commission under
7 this section shall survive any default by the electric utility
8 and shall terminate only upon the termination of the step-in
9 agreement as provided in subsection (d).

10 (k) If the electric utility fails to timely file any
11 submission as described in subsection (j), the department shall
12 promptly file, and the public utilities commission shall allow
13 to become effective, a substitute submission as if the
14 submission had been filed by the electric utility under
15 subsection (j). ~~The electric utility shall implement the power~~
16 purchase charges in the substitute submission from the
17 department.

18 **§269-C Default of electric utility; successor**
19 **requirements.**

20 (a) If the obligee provides notice to the department of a
21 default of a covered power purchase agreement, the department
22 shall provide the electric utility notice of the default. ~~Two~~
23 days after the electric utility receives the notice, the
24 electric utility shall turn over all revenues from the power

1 purchase charges and reserve fees arising from any covered
2 power purchase agreements identified in the notice, regardless
3 of when collected, then in its possession, and, subject to
4 section 269-B(e), all future revenues from the power purchase
5 charges and reserve fees thereafter collected, to the fund ~~as~~
6 ~~directed by the department; provided that the~~ established
7 pursuant to section 269-D(a). The amounts referenced in the
8 prior sentence shall include all revenues received by the
9 electric utility after a default for such power purchase
10 charges and reserve fees billed before the default ~~that were~~
11 ~~intended to be used to pay power purchase costs arising from~~
12 ~~the covered power purchase agreement.~~ The department shall
13 use the ~~revenue~~ revenues collected from the power purchase
14 charges and reserve fees, including the revenues turned over,
15 only in the order as follows:

16 (1) ~~—~~ To pay power purchase costs pursuant to a step-in
17 ~~agreement~~ agreements, subject to the appointment,
18 authorization, and empowerment of the electric utility as
19 an agent as described in section 269-F(e); and,
20 ~~(2) — To implement a rate credit to customers for~~
21 ~~revenue~~ revenues in excess of amounts owed under ~~the~~ covered
22 power purchase ~~agreement.~~ agreements,

1 (2) To recover any incremental administrative costs of the
2 utility or the department incurred to implement the
3 requirements of this part; and
4 (3) To implement a rate credit to customers.

5 **(b)** Any step-in agreement shall remain in full force and
6 effect notwithstanding any bankruptcy, reorganization, or other
7 insolvency proceedings with respect to the electric utility.

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

14 **(d)** Any successor to an electric utility shall be bound
15 by the requirements of this part. The successor shall perform
16 and satisfy all obligations of the electric utility, in the
17 same manner and to the same extent as the electric utility,
18 including the obligation upon default to bill and collect the
19 power purchase charges and reserve fee and remit to the fund
20 the revenues collected ~~revenue to the department~~ in connection
21 with any covered power purchase agreement, unless and until the
22 step-in agreement is terminated as described in section 269-
23 B(d) .

1 (e) If the ~~credit rating of the electric utility or its~~
2 ~~successor achieves investment grade status,~~ step-in agreement
3 is terminated as described in section 269-B(d), then by
4 operation of law, any ~~ownership of and~~ title to the
5 ~~revenue~~revenues from power purchase charges and reserve fees
6 attributable to the covered power purchase agreement shall
7 immediately ~~divest from the department and vest in the electric~~
8 ~~utility or its successor; provided that~~ cease to be held in
9 trust and the electric utility or its successor shall
10 thereafter be the sole ~~owner and~~ holder of title or beneficial
11 and equitable interest in, and any claim or right to, the
12 revenue, and the obligation of the electric utility or its
13 successor to bill and collect the power purchase charges and
14 reserve fees, manage the ~~revenue~~revenues as an agent for the
15 department, and, if applicable, to remit the collected
16 ~~revenue~~revenues to the fund, shall terminate.

17 **§269-D Power purchase costs trust fund.**

18 (a) There is established ~~in~~outside the state treasury ~~the a~~
19 power purchase costs trust fund ~~into which~~ to be administered by
20 the department. The electric utility shall ~~be deposited~~
21 deposit into the fund all ~~proceeds of the~~ revenues collected in
22 connection with covered power purchase agreements (1) from
23 power purchase charges ~~to be paid~~ in the event of a default of

1 ~~a covered power purchase agreement by the electric~~
2 ~~utility~~ agreements and (2) from reserve fees.

3 (b) Moneys in the fund shall be ~~administered and~~ held by
4 the department in trust for the benefit of obligees of covered
5 power purchase agreements to the extent ~~the obligees are owed of~~
6 the amounts owed to such obligees. The department's payments
7 from the fund shall be made without appropriation or allotment
8 as provided in section 37-40.

9 (c) If the ~~credit rating of the electric utility or its~~
10 ~~successor achieves investment grade status,~~ step-in agreement is
11 terminated as described in section 269-B(d), the fund shall
12 cease to receive any ~~revenue~~ revenues from the power purchase
13 charges collected by ~~that the~~ electric utility or its successor
14 and the department shall pay to the electric utility or its
15 successor the remainder of any moneys in the fund; ~~provided~~
16 ~~that the~~ attributable to power purchase charges. Those moneys
17 ~~in the fund~~ shall be considered ~~revenue~~ revenues of the electric
18 utility or its successor.

19 **~~§269-E Power purchase costs~~ Establishment of a reserve**
20 **~~fee; establishment.~~ account**

21 ~~(a) By August 1, 2025~~ (a) Within thirty days of the
22 effective date of this Act, the public utilities commission
23 shall authorize ~~a surcharge~~ surcharges proposed by an electric
24 utility, referred to as ~~the power purchase costs~~ reserve ~~fee,~~

~~the revenue from which shall be accorded the same treatment as~~
~~revenue from power purchase charges as described in section~~
~~269-B(g). The power purchase costs reserve fee~~fees. Reserve
fees may be included in the purchased power adjustment clause
on customer bills. The department shall establish and maintain
a separate account to accept and account for revenues from
reserve fees as part of the fund established under section 269-
D, and the electric utility shall promptly deposit all revenues
collected from reserve fees into the account. The utility may
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.

(b) ~~The power purchase costs reserve fee~~ Reserve fees
shall be collected and maintained to establish a reserve
account in an amount not to exceed (1) fifteen per cent of the
forecasted monthly power purchase costs of all covered power
purchase agreements. ~~plus~~ (2) an amount sufficient to recover
costs related to administration of the reserve account and any
applicable taxes and fees.

(c) ~~In the event of default pursuant to section 269-C(a),~~
~~all previously collected revenues and all future revenues from~~
~~the power purchase costs reserve fee shall be accorded the same~~
~~treatment as revenues from power purchase charges as described~~
~~in section 269-C.~~

~~(d) Notwithstanding subsection (c), if the credit rating of the electric utility or its successor achieves investment grade status and~~ If the step-in agreement terminates pursuant to section 269-B(d), ~~all~~ reserve fees collected in connection with the covered power purchase agreement shall cease to be collected, and all moneys remaining in the fund attributable to the reserve ~~collected from the power purchase costs reserve fees~~ shall be returned, together with any associated interest earned, to customers through a rate credit.

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

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

(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 ~~on terms and conditions that reasonably compensate the electric utility or its successor for its incremental cost to provide services, and adequately secure payment to the department.~~

1 **(b)** At the request of the department, the public
2 utilities commission shall order an electric utility or its
3 successor to perform the duties pursuant to a contract under
4 subsection (a).

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

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

20 **(e)** To implement the requirements of this part, the
21 director of finance may appoint, authorize, and empower the
22 electric utility, as agent for and on behalf of the State, to
23 manage and pay out moneys, including from the fund, for
24 fulfillment of payment obligations of the State arising from

1 covered power purchase agreements. The appointment shall
2 terminate when the step-in agreement ~~for the covered power~~
3 ~~purchase agreements terminates pursuant to~~ is terminated as
4 described in section 269-B(d)."

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

11 SECTION 4. In codifying the new sections added by section
12 2 of this Act, the revisor of statutes shall substitute
13 appropriate section numbers for the letters used in designating
14 the new sections in this Act.

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

16 INTRODUCED BY: _____

17 BY REQUEST

S.B. NO. 1501

Report Title:

BNF; Public Utilities Commission; Energy; Step-In Agreements;
Power Purchase Agreements; Power Purchasing Costs Trust Fund

Description:

Allows the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements. Establishes the Power ~~Purchasing~~Purchase Costs Trust Fund. Establishes that revenues from on-bill charges for power purchase agreements and ~~accompanying reserves~~ reserve fees shall be held in trust by the State, and that independent power producers shall hold a beneficial interest in the ~~revenue and reserve~~revenues 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, 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.

Senate Bill 1501 – Relating to Renewable Energy
TESTIMONY

Hawai'i State Senate
Senate Committee on Energy and Intergovernmental Affairs
Senate Committee on Commerce and Consumer Protection
Tuesday, February 11, 2025
9:30 a.m.

Aloha Chair Wakai, Chair Keohokalole and Members of the Joint Committees,

Mahalo for the opportunity to provide testimony in **support of SB 1501, relating to renewable energy**. AES Hawai'i is the State'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, 37 MW of Stage 2 projects, and 126 MW of Stage 3 projects.

The purpose of SB 1501 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 be backed by the State through the proposed step-in agreements.

The proposed step-in agreement with the State 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 and significant delays in the State's transition to 100% renewable energy. 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 understands that HECO submitted an amended version of SB 1501 as testimony for today's hearing. While we generally support HECO's proposed amendments, there are additional changes that we believe are critical. **We propose the following amendments, in addition to HECO's proposed amendments**, for consideration. We believe these amendments will enhance financing opportunities and mitigate increased financing costs for renewable energy projects:

-
1. **Section 269-A Definitions:** The statute should clearly state that if the PPA is terminated by HECO during bankruptcy, the step-in agreement will obligate the department to make payments under PPAs as if the PPA is still in effect or pay the IPP's damage claim arising from such termination. Additionally, if the PPA provides for payment of a termination payment after a HECO default, the statute should expressly provide that any termination payment due under the PPA is covered by the step-in agreement. This will be critical to lenders upon reviewing the financing.

"Power purchase costs" means costs incurred by an electric utility pursuant to the terms of a power purchase agreement, including without limitation, costs such as termination payments payable by an electric utility in connection with the termination of a power purchase agreement as a result of a default by such electric utility thereunder.

2. **Section 269-B(a) Step-in agreements (last sentence):** As mentioned previously, this will ensure the State is obligated to make damage and termination payments, if HECO terminates the PPA. This is a priority for lenders.

An obligee of a covered power purchase agreement shall have no claim or lien on any moneys of the State, except for those revenues from the power purchase charges and reserve fees attributable to covered power purchase agreements. Notwithstanding anything to the contrary in this part, a step-in agreement shall also obligate the department to pay claims of the obligee from moneys in the fund arising out of termination of a power purchase agreement by the electric utility under bankruptcy law.

3. **Section 269-B(f) Step-in agreements (first sentence):** Include language specifying that other terms and conditions imposed under the step-in agreement will not impede full and prompt payment of obligations under the agreement.

The department may impose other conditions, and may include other terms, in a step-in agreement that the department deems necessary to implement the requirements of this part, provided that such conditions and terms shall not adversely affect the obligation of the department to make prompt and full payments for power purchase costs owed by an electric utility to the obligee as and when due in the event of a default as required by Section 269-182B(a) or otherwise be inconsistent with the covered power purchase agreement.

4. **Section 269-B(h) Step-in agreements (first sentence):** Include language specifying that in the event of a bankruptcy filing by the electric utility, title to the revenues does not divest from the department and vest in the electric utility. This is necessary to address the risk of payments being held up in bankruptcy proceedings.

Prior to default or a bankruptcy filing by or in respect of the electric utility, if any payment obligation of the electric utility under a covered power purchase agreement for power purchase costs becomes owed and due, any title held by the department in trust to the revenues from power purchase charges for the payment obligation owed and due shall divest from the department and vest in the electric utility or its successor at the time the payment by the electric utility or its successor is made to the obligee.

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.



Sandra Larsen
President
AES Hawai'i



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Ameresco.com

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

9:30 AM, FEBRUARY 11, 2025

Conference Room 229 & Via Videoconference

SB 1501

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

Ameresco **strongly supports** SB 1501, which allows the State, Office of Budget and Finance to enter into step-in agreements for payment obligations arising under certain power purchase agreements. The bill is essential to ensuring the financing and construction of the critically needed “Stage 3” renewable energy projects that have already been procured by the utility and are now under development.

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 – 99MW Puuloa Energy and 6 MW / 30MWh Puuloa Solar on Oahu and 40MW Ukiu Energy – the success of which hinges off of successful financing for these projects which hinges on strong support via SB1501.

Background

In January 2023, Hawaiian Electric solicited renewable energy project bids through its “Stage 3” Request for Proposals (RFP). The goal of the RFP was to procure 800-1,200 MW of renewable energy projects that would be placed in service by the end of 2029 (and additional capacity to be placed in service by 2033), which is critical to reliability and resilience. Proposals were submitted to Hawaiian Electric in April of 2023 and projects were awarded in November 2023. Between the time that the proposals were submitted and awarded, however, Hawaiian Electric’s credit rating was significantly downgraded to sub-investment-grade status, making it much more challenging for IPPs to obtain both equity and debt financing for these large renewable projects. Specifically, lenders and equity investors are reluctant to invest in these projects because the fear of what would happen in the event of a Hawaiian Electric bankruptcy – and during a bankruptcy, payments that are due to the IPPs by Hawaiian Electric would be disrupted for several months, or potentially longer, which could in turn lead to IPPs defaulting on their payment obligations to lenders.

In other cases, lenders are seeking to charge higher interest rates to IPPs to account for this additional risk which results in non-viable projects.

Several IPPs have already withdrawn their Stage 3 projects. Additionally, many planned Stage 2 projects have also terminated or been delayed. It is in the State's interest to ensure that the remaining projects are able to obtain financing and come online – not only to ensure that Hawai'i is able to meet its climate and renewable energy goals, in which these Stage 3 projects play a critical role, but also for the integrity and reliability of the electric grid, and to ensure affordable rates to the ratepayers of Hawai'i that are not tied to volatile fossil fuel prices. Hawaiian Electric's only other current renewable energy procurement is the Integrated Grid Planning (IGP) procurement. However, the IGP procurement has been delayed pending a contested case proceeding before the Public Utilities Commission, just now commencing. There are no other large renewable projects "in the works" beyond the Stage 3 projects.

SB1501

As currently drafted, SB1501 will help ensure the financing and construction of Stage 3 projects, because it provides a mechanism for the State to enter into step-in agreements with the IPPs and make payments required under the PPAs. These step-in-agreements will instill greater lender confidence that the payments due under the PPAs will continue to be made even in the event of a Hawaiian Electric bankruptcy. This support from the State allows the projects to be financeable.

Ameresco does note, however, that entering into this step-in agreement must not be optional or discretionary, in order to mitigate the risks of the financiers, which would be in the public interest. Additionally, setting up a reserve fund that exists and is funded prior to any Hawaiian Electric bankruptcy will be critical to ensuring the effectiveness of this legislation. 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. Due to the disruptions that may occur during a bankruptcy, these funds must be set up in advance. Ameresco is aware that various parties have suggested changes to the way the funds may be structured, and Ameresco defers to the State and Hawaiian Electric on those nuances. However, it is necessary, if this legislation is to be effective in preserving the ability of these projects to move forward, for a fund to be in existence and funded prior to any bankruptcy.

Thank you for the opportunity to provide this testimony.

February 11, 2025

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

SUBJECT: **SUPPORT THE INTENT OF S.B. 1501, RELATING TO ENERGY.** Allows the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements. Establishes the Power Purchasing Costs Trust Fund. Establishes that revenues from on-bill charges for power purchase agreements and accompanying reserves shall be held in trust by the State, and that independent power producers shall hold a beneficial interest in the revenue and reserve 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, payment, and managing agent of the Department of Budget and Finance in the service of performing step-in agreements.

HEARING

DATE: Tuesday, February 11, 2025
TIME: 9:30 a.m.
PLACE: Capitol Room 229

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

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA **supports the intent** of S.B. 1501, which allows the State to enter into step-in agreements for payment obligations arising under certain power purchase agreements. Establishes the Power Purchasing Costs Trust Fund. Establishes that revenues from on-bill charges for power purchase agreements and accompanying reserves shall be held in trust by the State, and that independent power producers shall hold a beneficial interest in the revenue and reserve 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, payment, and managing agent of the Department of Budget and Finance in the service of performing step-in agreements.

The State has a policy goal of 100% renewable by 2045. This measure will help the state reach its goal by encouraging continued investment in renewable energy projects by providing assurances to power project developers. Further, the reduced risks associated with the passage of



this measure will lead to lower project costs, which will ultimately lead to lower costs for ratepayers.

Thank you for the opportunity to testify in support of the intent of this measure.

QUALITY PEOPLE. QUALITY PROJECTS

**Senate Bill 1501 – Relating to Renewable Energy
TESTIMONY**

Hawai'i State Senate

Senate Committee on Energy and Intergovernmental Affairs

Senate Committee on Commerce and Consumer Protection

Tuesday, February 11, 2025

9:30 a.m.

LATE

Aloha Chair Wakai, Chair Keohokalole and Members of the Joint Committees,

Mahalo for the opportunity to provide testimony in **support of SB 1501, relating to renewable energy**. AES Hawai'i is the State'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, 37 MW of Stage 2 projects, and 126 MW of Stage 3 projects.

The purpose of SB 1501 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 be backed by the State through the proposed step-in agreements.

The proposed step-in agreement with the State 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 and significant delays in the State's transition to 100% renewable energy. 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 understands that HECO submitted an amended version of SB 1501 as testimony for today's hearing. While we generally support HECO's proposed amendments, there are additional changes that we believe are critical. **We propose the following amendments, in addition to HECO's proposed amendments**, for consideration. We believe these amendments will enhance financing opportunities and mitigate increased financing costs for renewable energy projects:

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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.

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Sandra Larsen
President
AES Hawai'i