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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
Friday, February 7, 2025
9:50 a.m.
Conference Room 229

On the following measure:
S.B. 1648, RELATING TO POWER OUTAGES

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 (DCA). The Department offers comments on this bill.

The purpose of this bill is to establish requirements for compensation to utility customers following a power outage.

The Department supports the intent of this bill to increase justified compensation, and thereby re-focus electric utilities on reliable service. The Department offers the following suggestions to strengthen this bill:

In proposed Sec. 269-_(b), the Legislature could consider also allowing hospitals to seek “emergency and contingency expenses”.

Also, the Hawaii Public Utilities Commission (Commission) should be enabled in proposed Sec. 269-_(c) to promulgate rules, pursuant to Chapter 91, for the new compensation waiver process. Proposed subsection (c) outlines the waiver process well in statute, but the Commission may need to fill in additional details for the waiver process via rules, given its experience administering existing docket processes.

In proposed Sec. 269-_(f), stating that compensation payments shall not be recoverable from ratepayers would be better than the current phrasing, which is that "Payments shall not be paid out of funds collected from utility rate payers." Most utility funds to pay compensation were likely "collected from utility rate payers" at one time or another. Cash reserves to pay compensation are likely mostly retained earnings, which were at one point "collected from utility rate payers" but not paid out to shareholders as dividends. Although some cash reserves could be derived from stock or debt issuances, those would likely be marked for capital investments or operations in cash reserves only temporarily, and since cash is fungible, it would be difficult to segregate that cash from the aforementioned retained earnings originally "collected from utility rate payers". Forward-looking phrasing, such as "shall not be recovered", would be better to execute on the apparent intent of this provision.

Finally, in proposed Sec. 269-_(i), Hawaiian Electric and Kauai Island Utility Cooperative should inform the Legislature on the extent to which this new record-keeping is already done, such as pursuant to some existing requirement in Hawaii Administrative Rules Ch. 6-60 or other binding statutes, rules, or Commission-approved tariffs.

Thank you for the opportunity to testify on this bill.

JOSH GREEN, M.D.
GOVERNOR

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Testimony of the Public Utilities Commission

To the
Senate Committee on
Commerce and Consumer Protection

February 7, 2025
9:50 a.m.

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

Measure: S.B. No. 1648
Title: RELATING TO POWER OUTAGES.

Position:

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

Comments:

The Commission supports the intent of this measure to require compensation to electric utility customers for direct damages incurred as a result of extended power outages. The Commission shares the Legislature's concern about the impact of power outages, such as the prolonged and widespread outage in downtown Honolulu and Chinatown in June 2024 (the so-called "Downtown Outages"). The Downtown Outages, as the Legislature acknowledges in the introduction to S.B. 1648, were detrimental to Honolulu's economy, adversely affected the wellbeing of residents in the area, including families with *keiki* and vulnerable *kupuna*, local small businesses lost revenue, inventory, and equipment, and workers lost wages.

Outages occur for a wide variety of reasons. Vegetation knocks power lines, weather damages equipment, and equipment accidentally fails, just to name a few. The Downtown Outages, according to Hawaiian Electric's investigation[1], were the unfortunate result of a failed cable splice inside a manhole in the complex network of cables built under Honolulu's downtown that services the buildings and businesses in the dense, busy area. The Downtown Outages in this case were deemed an accident in the independent, third-party forensic analysis commissioned by Hawaiian Electric. Hawaiian Electric's and Kauai

[1] Non-docketed filing submitted September 4, 2024, by Hawaiian Electric Company. PUC Case Number PC-191765. Filing Number F-313-417. Report titled "Hawaiian Electric Network Forensic Analysis Final Report".

Island Utility Cooperative's Tariff Rule No. 16 gives customers the right to file a claim for compensation for certain losses caused by an outage but shields the electric utilities from major liabilities for losses caused by an accident, among other causes (i.e. storm, fire, strikes, riots, war, or any cause outside the company's control).

Nonetheless, the Commission recognizes revisions to Tariff Rule No. 16 are overdue. The policy was last revised in 1991. Since then, an aged grid, greater load demands, and increased cost of living have made the process unsatisfactory for ratepayers. Hawaiian Electric receives nearly 1,000 filings from ratepayers seeking hundreds of dollars in compensation every year. In 2023, the average amount paid per closed claim was about $250, typically for spoiled groceries and broken appliances.[2] The process is laborious for both ratepayers and the utility, requiring painstaking reviews of owners' receipts on a case-by-case basis to ensure customer compensation is fair and not fraudulent. The process does not easily accommodate individuals with language barriers. Although medium and large business owners may receive some compensation from their insurers under their general liability insurance (or an equivalent policy), small-businesses and sole-proprietors as well as workers' lost wages and important earnings are not covered under Tariff Rule No. 16.

That being said, the Commission believes a docketed process rather than the proposed addition to Hawaii Revised Statues chapter 269 in S.B. 1648 is a preferrable venue for improving the compensation process for ratepayers affected by power outages. S.B. 1648, by expanding Hawaiian Electric's liability for losses compensable to ratepayers may create financial hardship for the company at a time when it is already weakened financially. S.B. 1648 also imposes timelines on both the utility and the Commission that are likely untenable.

Instead, the docketed process allows for parties to intervene and for the Commission to determine a compensation policy and process that is just, reasonable and benefits the public. This year the Commission will also hire a firm to serve as the Hawaii Electric Reliability Administrator to develop reliability standards specific to Hawaii's needs, which would contribute to such a docket process by providing expertise and insights to our Engineering section.

The Commission would be willing to provide the Legislature with a progress report on this matter before the 2026 Legislative Session.

Lastly, the Commission notes that there are various open dockets related to the Commission's review of the Downtown Outages, notably dockets 2024-0343 and 2018-0088.

In Docket No. 2024-0343, Hawaiian Electric is expected to address the circumstances surrounding the outage, and seeks approval to acquire two transformers and two switchgears for its Iwilei Substation, which serves the Downtown Honolulu network. This

[2] Hawaiian Electric response to Commission Information Request 10 in Docket 2021-0024 filed on April 26, 2024.

request comes in response to the failure of two of the three existing transformers and significant corrosion affecting the switchgears, which have compromised the reliability of the Downtown Network.

Regarding Docket No. 2018-0088, Hawaiian Electric operates under Performance Based Regulation, which includes performance incentive mechanisms (“PIMs”) evaluated annually. These PIMs can impose penalties on Hawaiian Electric for outages based on metrics such as SAIDI, the System Average Interruption Duration Index, which are the minutes of non-momentary electric interruptions, per year; or SAIFI, the System Average Interruption Frequency Index, which represents the average number of times a customer experiences an outage during the year. The Commission reviews these reports annually, and any outages could have implications for Hawaiian Electric's performance incentives.

Thank you for the opportunity to testify on this measure.

TESTIMONY BEFORE THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

SB 1648
Relating to Power Outages

Friday, February 7, 2025
9:50 AM
State Capitol, Conference Room 229

Jack Relf
Associate General Counsel
Hawaiian Electric

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

My name is Jack Relf and I am testifying on behalf of Hawaiian Electric in opposition to SB 1648, Relating to Power Outages.

Hawaiian Electric appreciates the intent of this bill to address utility service reliability and financial impacts from service interruptions. However, the bill is unnecessary and could have unintended consequences.

First, the bill is unnecessary because existing Tariff Rules already require Hawaiian Electric to compensate customers for any loss, cost, damage or expense caused by an interruption of service within the Company's control through the exercise of reasonable diligence or care,[1] and customers have the right to seek review from the Public Utilities Commission and then the courts.[2] This Rule inherently and rightfully recognizes that there are practical limits on what is reasonable to expect from utility

[1] Hawaiian Electric Company, Inc. Tariff Rule No. 16; Maui Electric Company, Limited Tariff Rule No. 16; Hawaii Electric Light Company, Inc. Tariff Rule No. 16.
[2] Hawaiʻi Revised Statutes §§ 91-14, 269-6; Hawaiʻi Administrative Rule §§ 16-601-66, 67.

service. Beyond that, the Public Utilities Commission, at the legislature's directive, and after a three-year investigation, established a performance-based regulation ("PBR") framework governing Hawaiian Electric, which contains significant penalties for poor reliability of service. Those penalties target performance standards reflecting a careful balancing of the importance of reliability against the cost to customers to provide higher reliability. The PBR framework is currently under review and that proceeding is the appropriate venue to address the concerns raised by this bill and balance the many other important objectives to be served by the utilities.

Second, the bill could have the unintended consequence of disincentivizing electric utilities from appropriately prioritizing the safety of the public and their employees. There are situations in which Hawaiian Electric elects not to restore power for a period of time due to safety concerns. For example, in a Public Safety Power Shutoff situation, Hawaiian Electric will not restore power until the hazardous weather conditions subside and facilities are then inspected to ensure that service may safely be restored. Electric utilities should not be penalized for safe practices.

Accordingly, Hawaiian Electric opposes SB 1648. Thank you for this opportunity to testify.

Kauaʻi Island Utility Cooperative
Your Touchstone Energy® Cooperative

LATE

Testimony Before the Senate Committees on Commerce and Consumer Protection

By David Bissell
President and Chief Executive Officer
Kauaʻi Island Utility Cooperative
4463 Paheʻe Street, Suite 1, Līhuʻe, Hawaiʻi, 96766-2000

Friday, February 7, 2025; 9:50 am
Conference Room #229 & Videoconference

Senate Bill No. 1648 – RELATING TO POWER OUTAGES

To the Honorable Chair Jarrett Keohokalole, Vice Chair Carol Fukunaga, and Members of the Committee:

Kauaʻi Island Utility Cooperative (KIUC) is a not-for-profit utility providing electrical service to more than 34,000 commercial and residential members.

KIUC opposes this measure.

KIUC offers a process for members to file a claim for losses or damage as a result of disruption of electrical service. Claims are thoroughly investigated and if it is determined that damage was due to negligence on the utility's part, KIUC will compensate accordingly. KIUC has taken steps to make the claims process as user-friendly as possible, and regularly informs members of their ability to file claims under Tariff Rule 16. KIUC also provides multiple methods of claims intake (on-line, telephone, email) that are available 24/7.

In order to prevent claims, KIUC provides information on how to protect members' assets from damage due to outages, and offers rebates for members to upgrade old appliances to newer, energy efficient models. Under this bill, KIUC would be held responsible for the failure of members to replace old equipment or adequately protect their property from surges, outages and other potential grid or weather events. KIUC would also be burdened with significant additional administrative processes for potentially hundreds of outages on an annual basis. This would both increase administrative costs and impact response time of our personnel to other customer service and operational matters.

While not all members who file claims are satisfied with the result, we feel the current process is fair, equitable and consistently applied.

This bill appears to have been introduced as a result of a single incident on Oʻahu which resulted in a large number of claims against Hawaiian Electric. We feel that instances such as these are rare, and that a claims process as described in this bill will create an unnecessary layer of regulation that will, in the end, result in higher utility operational costs that will ultimately be passed on to the ratepayer.

Mahalo for your consideration.