

TESTIMONY OF
JAMES P. GRIFFIN, Ph.D.
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

February 23, 2022
2:00 p.m.

Chair Johanson and Members of the Committee:

MEASURE: H.B. No. 1524

TITLE: RELATING TO ENERGY RESOURCES.

DESCRIPTION: Amends the definition of "petroleum product" to mean any product derived from the distillation of crude oil.

POSITION:

The Public Utilities Commission ("Commission") supports this measure and offers the following comments for consideration.

COMMENTS:

The Commission supports this measure, which would clarify the types of products that should be included under the unfair trade practice provisions outlined in Chapter 486B, Hawaii Revised Statutes ("HRS"). Currently, the definition of "petroleum product" excludes certain types of oil-derived products, and thus, these products are not subject to certain fines, consumer protections, and other safeguards.

Specifically, the current definition does not include certain petroleum products that the state's electric utilities purchase from suppliers. For this reason, utility contracts and arrangements with fuel suppliers may lack sufficient protection from unfair trade practices such as price gouging, false advertising, and restrictions on supply.

This issue was recently evident in contract renegotiations between Par Hawaii Refining, LLC ("Par") and Hawaiian Electric. On April 29, 2020, shortly after the onset of the global pandemic, Par sent a letter to Hawaiian Electric, demanding renegotiation of their fuel

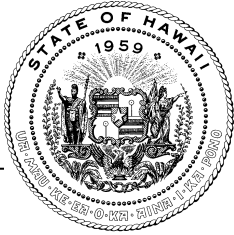
supply contract and notifying Hawaiian Electric that, unless the parties came to an amended agreement by June 8, 2020, Par would terminate the original fuel supply contract, leaving the state's electric utilities without a contracted fuel supply needed to serve customers. Hawaiian Electric ultimately agreed to an amended contract that increased the price of fuel by over \$160 million through December 2022. Hawaiian Electric's estimates indicated that the higher prices of the amended contract would result in a residential bill increase of approximately \$5.55 per month for a typical 500 kilowatt hour ("kWh") bill from July 15, 2020, through May 2021, and an increase of \$5.17 per month from July 15, 2020, through December 2022.

In granting approval of the amended contract, the Commission found that if the amended contract was not approved, there would be a significant risk that Par would terminate the original contract, which would likely cause substantial energy security issues on Oahu and potentially elsewhere in the state. The Commission also found that there was not any other feasible, readily available source of low sulfur fuel oil ("LSFO") that was equal or cheaper in cost than the terms of the amended contract.

In Order 37857 in Docket No. 2020-0090, issued on July 6, 2021, the Commission stated that Par's threat to terminate the contract "effectively created a 'take it or leave it' situation which appears to have affected Hawaiian Electric's bargaining power, thereby limiting its opportunities to protect ratepayers." The Commission also found that "Hawaiian Electric is in a disadvantaged bargaining position relative to Par, in part, due to its failure to sufficiently develop an alternative LSFO fuel plan, should Par exit the State." In approving the amended contract, the Commission imposed several conditions upon Hawaiian Electric in order to ensure that it develops alternatives and improves its bargaining power, so that a similar situation does not arise in the future.

The Commission believes that it is imperative to shield customers from unfair trade practices and ensure that suppliers of essential products and services are subject to sufficient oversights and legal standards. The Commission notes that similar requests have been made for fuel supply agreements with Hawaii Gas and Kalaheo. The Commission believes that this measure will help to reduce threats to energy security for Hawaii residents, as well as negotiation imbalances that impose costs on ratepayers.

Thank you for the opportunity to testify on this measure.



HAWAII STATE ENERGY OFFICE STATE OF HAWAII

DAVID Y. IGE
GOVERNOR

SCOTT J. GLENN
CHIEF ENERGY OFFICER

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Testimony of
SCOTT J. GLENN, Chief Energy Officer

before the
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Wednesday, February 23, 2022
2:00 PM
State Capitol, Conference Room 329 & Videoconference

**SUPPORT
HB 1524
RELATING TO ENERGY RESOURCES.**

Chair Johanson, Vice Chair Kitagawa, and Members of the Committee, the Hawaii State Energy Office (HSEO) supports HB 1524, which amends the definition of "petroleum product" to mean any product derived from the distillation of crude oil.

HSEO's comments are guided by its mission to promote energy efficiency, renewable energy, and clean transportation to help achieve a resilient, clean energy, decarbonized economy. HSEO has a statutory interest in maintaining energy security in Hawaii. Energy is one of the Federal Emergency Management Agency's identified community lifelines, which are the most fundamental services in the community that, when stabilized, enable all other aspects of society to function. HSEO is the primary and coordinating agency for State Emergency Support Function 12: Energy.

HSEO agrees that the current definition of "petroleum product" could be improved. Currently, the definition of "petroleum product" excludes certain types of oil-derived products, and thus, these products are not subject to certain fines, consumer protections, and other safeguards. Of note is that the current definition does not include all petroleum products utilized by the state's electric utilities for power generation. The deficiency in the current definition creates a gap in protection against potential unfair trade practices that could affect Hawaii's energy security.

Recently, HSEO was a party to represent the State's interest in energy security in Docket No. 2020-0090, concerning the fuel supply contract between Hawaiian Electric and Par Hawaii Refining LLC ("Par"). Ultimately, HSEO did not oppose approval of the contract amendment to increase the price of fuel oil as HSEO could not definitively determine there would not be an impact on energy security if Par were to cancel the contract, leading to the potential ceasing of on-island refining at the onset of the COVID-19 pandemic. In Order 37857, issued on July 6, 2021, the Commission found that if they did not approve "the First Amendment there is a significant risk that Par will seek to terminate the Original Fuel Supply Contract" and that "If Par attempts to terminate the Original Fuel Supply Contract, it will most likely cause fuel supply security issues on Oahu and potentially elsewhere in the State." The consumer protections found in Hawaii Revised Statutes Chapter 486B were not considered in this docket, as the current definition does not include the low sulphur fuel oil being purchased by the electric utility.

Amending the definition as proposed in HB 1524 is a way to enhance consumer protection with respect to the petroleum industry, a step already taken with motor fuels such as gasoline and diesel. As Hawaii continues to displace fossil fuels with increasing levels of renewable energy, there is the potential for further market disruptions at the expense of consumers. It is critical that all petroleum products that Hawaii is dependent upon for energy security have appropriate consumer protections to ensure a smooth transition to a resilient, clean energy economy.

Thank you for the opportunity to testify.



February 23, 2022

**TESTIMONY OPPOSING HOUSE BILL 1524,
RELATING TO ENERGY RESOURCES**

House Committee on Consumer Protection & Commerce
The Honorable Aaron Ling Johanson, Chair
The Honorable Lisa Kitagawa, Vice Chair

Wednesday, February 23, 2022
VIA VIDEOCONFERENCE
Conference Room 329
State Capitol
415 South Beretania Street

Chair Johanson, Vice Chair Kitagawa, and members of the Committee,

Thank you for this opportunity to submit testimony to express concerns with HB 1524, Relating to Energy Resources.

My name is Eric Wright, President of Par Hawaii. We own and operate a fuel refinery in Kapolei, and we distribute those fuels through a statewide distribution system, including the Hele-branded convenience stores. We take seriously our role in the Hawaii economy and our moral obligation to do all in our power to ensure a reliable supply of all necessary energy products. It is the reason our 600 plus employees statewide come to work every day.

This bill would amend the definition of “petroleum product” to mean any product derived from the distillation of crude oil and would be applied to Hawaii Revised Statutes Chapter 486B, Unfair Trade Practices by Petroleum Industry.

First, while we support consumer protections generally, we urge caution in expanding the definition of Petroleum Product in HRS 486B. This statute is intended to protect the general public from deceptive and misleading practices in the sale of motor gasoline and lubricants. HRS 486B provides for the following: “Any person who violates this chapter shall be fined not more than \$10,000 for each violation or imprisoned for not more than five years, or both.”

The proponents of the bill seek to expand the definition to cover large, sophisticated fuel buyers such as Hawaiian Electric and Hawaii Gas. Fuel contracts such as these are heavily negotiated over the course of months and involve knowledgeable professionals, including legal counsel, on both sides. In the case of utility contracts, there is an additional layer of oversight by the Public Utilities Commission. As such, expanding 486B to these arrangements is

unnecessary and not advisable. Hawaii already has a well-established legal system to address contractual disputes and award damages to the aggrieved party. Additionally, HB 1524 will serve as a disincentive for other parties to supply fuel to the market. The proposed legislation will harm – not help – energy security in the State of Hawaii.

We appreciate the opportunity to express our opposition to this measure, and we are happy to answer any questions you may have.

HB-1524

Submitted on: 2/18/2022 4:53:00 PM

Testimony for CPC on 2/23/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Gerard Silva | Individual | Oppose | No |

Comments:

This is just another way to screw the public!!