

TESTIMONY OF HERMINA MORITA  
CHAIR, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

MARCH 17, 2014  
2:10 p.m.

**MEASURE:** S.B. No. 2809, S.D. 1

**TITLE:** Relating to Utilities Regulation

Chair McKelvey and Members of the Committee:

**DESCRIPTION:**

This measure amends Sections 269-16(b) and 269-134(c), Hawaii Revised Statutes (“HRS”), so that public utilities would be allowed to earn a fair return on public utility property that is “used and useful” for public utility purposes.

**POSITION:**

The Public Utilities Commission (“Commission”) strongly supports this measure and would like to offer the following comments for the Committee’s consideration.

**COMMENTS:**

Currently, HRS §§ 269-16(b) and 269-134(c), allow public utilities to earn a fair return on public utility property that is “used or useful” for public utility ratemaking purposes. Amending these sections, as provided for in this measure, will:

1. Align Hawaii’s statutory language regarding utility ratemaking with the widely accepted regulatory industry standard for determining fair value of investments allowable for ratemaking purposes; and
2. Align statutory language with Hawaii’s actual ratemaking practices.

**The “used and useful” principle is widely accepted as the regulatory industry standard for determining fair value in ratemaking.**

The vast majority of states with statutory ratemaking provisions have codified the “used and useful” principle in their ratemaking laws, while several other states have established the standard via relevant case law. Hawaii is among the very small minority of states that have codified the term “used or useful” in their ratemaking statute. Furthermore, both basic and advanced public utility regulatory treatises refer to the “used and useful” principle, but make no mention of the term “used or useful.”<sup>1</sup> Accordingly, the term “used and useful” has garnered a much higher level of acceptance and application than the term “used or useful.” This measure would align Hawaii’s statutory ratemaking language with the widely understood and accepted regulatory standard.

**The “used and useful” principle is already used by the Supreme Court of Hawaii and by the Commission.**

Hawaii has consistently employed the “used and useful” standard when interpreting ratemaking law despite the current language of HRS § 269-16. The Supreme Court of Hawaii has interpreted HRS § 269-16 to define rate base as “(t)he present value of the property, both tangible and intangible owned by the company used and useful in its utility operation . . .”<sup>2</sup> (emphasis added). Similarly, the Commission has interpreted HRS § 269-16 to invoke the “used and useful” standard, regularly determining whether projects and properties included in the rate base are used and useful for public utility ratemaking

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<sup>1</sup>See Bonbright, James C., Albert L. Danielsen, and David R. Kamerschen. *Principles of Public Utility Rates*. 2nd ed. Arlington, VA: Public Utilities Reports, 1988; see also Phillips, Charles F. *The Regulation of Public Utilities: Theory and Practice*. Arlington, VA: Public Utilities Reports, 1993; see also Lesser, Jonathan A., and Leonardo R. Giacchino. *Fundamentals of Energy Regulation*. Vienna, VA: Public Utilities Reports, 2007.

<sup>2</sup>See Application of Kauai Elec. Div. of Citizens Utilities Co., 60 Haw. 166, 188, 590 P.2d 524, 539 (1978) (quoting Honolulu Gas Co. v. Public Utilities Commission, 33 Haw. 487, 493-494 (1935)).

purposes.<sup>3</sup> The change proposed by this measure would allow the statutory language to better reflect the interpretation and standard practice employed in Hawaii, as well as in other jurisdictions.

Finally, the Commission believes that aligning Hawaii's statutory ratemaking standard language with general industry practice may have the added benefit of encouraging more prudent utility investments going forward by clarifying the reduced potential for recovery of investments that are only used or useful in serving the public need – but are not necessarily both used and useful.

For the above reasons, the Commission respectfully requests your consideration on this measure. Thank you for the opportunity to testify on this measure.

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<sup>3</sup>See Decision and Order No. 13950, In re GTE Hawaiian Telephone Company Incorporated, Docket Nos. 7579, 7524, 7523, 7193, 6404 (consolidated), filed June 9, 1995; see also Decision and Order No. 24085, In re Waikoloa Resort Utilities, Inc., d.b.a. West Hawaii Utility Company, Docket No. 2006-0409, filed March 10, 2008; see also Decision and Order No. 31751, In re Hawaii Electric Light Company, Inc., Docket No. 2012-0392, filed December 18, 2013; see also Decision and Order No. 31707, In re Hawaii Electric Light Company, Inc., Docket No. 2013-0144, filed November 26, 2013.



**DEPARTMENT OF BUSINESS,  
ECONOMIC DEVELOPMENT & TOURISM**

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Statement of  
**Richard C. Lim**  
Director

Department of Business, Economic Development, and Tourism  
before the

**HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

Monday, March 17, 2014

2:10 p.m.

State Capitol, Conference Room 325

in consideration of

**SB 2809, SD1**

**RELATING TO UTILITIES REGULATION.**

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee.

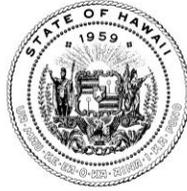
The Department of Business, Economic Development and Tourism (DBEDT) strongly supports SB 2809, SD1, an administrative measure, which amends Hawaii's utility ratemaking laws to allow utilities to earn a fair return on utility property that is "used and useful", instead of "used or useful".

DBEDT supports this bill as the stricter proposed language would encourage more prudent investment behavior by utilities for cost recovery purposes and align Hawaii's ratemaking procedures with the National Association of Regulatory Utility Commissioners' definition of "used and useful"<sup>1</sup>.

Thank you for the opportunity to offer these comments in support of SB 2809, SD1.

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<sup>1</sup> "used and useful" - A test for determining the admissibility of utility plant as a component of rate base. Plant must be in use (not under construction or standing idle awaiting abandonment) and useful (actively helping the utility provide efficient service).



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TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2014

MONDAY, MARCH 17, 2014  
2:10 P.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR, DIVISION OF  
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS, TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEE

SENATE BILL NO. 2809, SD1 - RELATING TO UTILITIES REGULATION

DESCRIPTION:

This measure proposes to amend portions of Hawaii's utility ratemaking laws so as to allow utilities in the State the opportunity to earn a fair return on utility property that is "used and useful" for public utility purposes.

POSITION:

The Division of Consumer Advocacy supports this measure.

COMMENTS:

Currently, Hawaii's courts use the term "used and useful" when deciding cases or disputes involving Hawaii's utility ratemaking laws. For instance, in In re Application of

Senate Bill No. 2809, SD1  
House Committee on Consumer Protection & Commerce  
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Kaanapali Water Corporation, the Hawaii Intermediate Court of Appeals used the term “used and useful” in determining whether the Hawaii Public Utilities Commission acted appropriately in that proceeding. The purpose of S.B. No. 2809, SD1, is to conform Hawaii’s utility ratemaking laws, including the statutes relating to the development of the undersea interisland cable, to reflect the practices followed by the Commission and the courts in ruling on dockets and cases involving the application of Hawaii’s utility ratemaking laws in the State. The amendments proposed in S.B. No. 2809, SD1, reflect generally accepted principles of public utility ratemaking which use the term “used and useful” in determining what public utility property should be considered in setting utility rates charged to the customers of a public utility.

Thank you for this opportunity to testify.

**TESTIMONY BEFORE THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE**

**S.B. No. 2809, S.D.1**

**Relating to Utilities Regulation**

Monday, March 17, 2014  
2:10 pm  
State Capitol, Conference Room 325

Kevin M. Katsura  
Associate General Counsel, Legal Department  
Hawaiian Electric Company, Inc.

Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

My name is Kevin Katsura and I am providing testimony on behalf of Hawaiian Electric Company and its subsidiary utilities Maui Electric Company and Hawai'i Electric Light Company in opposition to S.B. 2809, S.D.1.

This bill changes the language in Hawaii Revised Statutes ("HRS") §§ 269-16(b) and 269-134(c) from "used or useful" to "used and useful." The "used or useful" language has been used since 1933, formerly codified in Revised Laws of Hawaii 1925, sec. 2202. This proposed language change is unnecessary.

The Public Utilities Commission ("PUC") already applies the "used and useful" standard to utilities for certain capital projects. In past decisions on capital projects, the PUC has ordered that "no part of the project may be included in [. . .] rate base unless and until the project is in fact installed, and is used and useful for public utility purposes[. . .]". In addition, utility investments are already subject to a prudence review by the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs and the PUC. Only prudent investments are included in rate base when they are used or useful.

If this Committee is inclined to pass the bill, to be consistent with "standard regulatory practice," the word "actually" which precedes "used and useful" should also be deleted.

Thank you for this opportunity to testify.