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

FEBRUARY 5, 2014
2:10 p.m.

MEASURE: H.B. No. 2260
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 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."[1] 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 . . ."[2] (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

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[1]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.

[2]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)).

ratemaking purposes.[3] 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.

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[3]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.

REVISED

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 & COMMERCE

Wednesday, February 05, 2014
2:10 p.m.
State Capitol, Conference Room 325

in consideration of
HB 2260
RELATING TO UTILITIES REGULATION.

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

The Department of Business, Economic Development and Tourism (DBEDT) supports HB 2260, 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 prudent investment behavior by utilities for cost recovery purposes. Furthermore, the proposed language would also align Hawaii's ratemaking procedures with the National Association of Regulatory Utility Commissioners' definition of "used and useful"[1].

Thank you for the opportunity to offer these comments in support of HB 2260.

[1] "**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).

NEIL ABERCROMBIE
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SHAN S. TSUTSUI
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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2014

WEDNESDAY, FEBRUARY 5, 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

HOUSE BILL NO. 2260 - 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 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 H.B. No. 2260 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 H.B. No. 2260 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.

kawakami3-Benigno

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 01, 2014 5:41 AM
To: CPCtestimony
Cc: skaye@runbox.com
Subject: *Submitted testimony for HB2260 on Feb 5, 2014 14:10PM*

HB2260
Submitted on: 2/1/2014
Testimony for CPC on Feb 5, 2014 14:10PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
sally kaye	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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LATE

TESTIMONY BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

H.B. 2260

Relating to Utilities Regulation

Wednesday, February 5, 2014, 2:10pm
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 testifying on behalf of Hawaiian Electric Company and its subsidiary utilities Maui Electric Company and Hawai'i Electric Light Company in opposition to H.B. 2260.

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 in since 1933, formerly codified in Revised Laws of Hawaii 1925, sec. 2202. This proposed change would not "encourage more prudent investment behavior by utilities for cost recovery purposes[,]" but instead may lead to confusion and uncertainty.

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[. . .]". Therefore, a language change is unnecessary and would not accomplish the stated purpose.

In addition, utility investments are already subject to a prudency 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.

However, revising the law could create confusion and uncertainty on how to treat and manage certain utility property. A change in the statutory language may lead to uncertainty as to how certain items may be treated under the new statutory language. For example, property held for future use, fuel inventory, as well as material and supplies inventories, which are necessary investments to be able to

continue to provide safe reliable service, are currently included in rate base for the Hawaiian Electric Companies. These items are not only "useful" but absolutely necessary for the public utility to provide continuous service to customers. But they have not yet been "used." However, they have been approved for inclusion in rate base in past rate cases in Hawai'i and in other jurisdictions. Under the proposed language change, there may be uncertainty as to how these items would be treated and how the utility should manage these items. While, other jurisdictions have interpreted the "used and useful" language to allow these items in rate base, until such a determination is made in Hawaii under the new statute, uncertainty may exist as to how to treat these items.

As it has done in the past, the Commission, where appropriate, can choose to utilize the "used and useful" language in its decisions. However, the "used or useful" language more clearly represents the ratemaking principles, particularly for assets like property held for future use and fuel and material and supplies inventories, that have been applied and supported by the regulatory and judicial record in this and other jurisdictions in the United States.

The uncertainty brought about by a change in the statutory language may cause concern to the rating agencies (i.e. Moody's , Standard and Poor's, and Fitch) which could ultimately affect the cost of capital to the Companies and result in higher bills for their customers.

If this Committee is inclined to pass the bill, to address any confusion or uncertainty, the Companies propose that a purpose statement be included as follows:

> The purpose of this Act is to align statutory utility language regarding ratemaking with more standard language in other jurisdictions. It is the intent of the legislature that existing legal precedent be considered consistent with this Act. This Act does not affect the meaning or operation of the statute or any action taken under it by the commission. No change in substance should be attributed to this Act.

Also, to be consistent with standard ratemaking language, the word "actually" which proceeds "used and useful." should also be deleted.

Thank you for this opportunity to testify.