



DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310

P.O. Box 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2016

MONDAY, FEBRUARY 29, 2016
2:05 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. HB 2567, PROPOSED HD1 - RELATING TO THE PUBLIC
UTILITIES COMMISSION

DESCRIPTION:

This proposed measure seeks to establish "substantial net benefit" as the Public Utilities Commission's ("PUC") standard for a transfer or assignment of a franchise.

POSITION:

The Division of Consumer Advocacy ("Consumer Advocate") supports the intent of this bill.

COMMENTS:

The Consumer Advocate has consistently argued that “substantial net benefit” should be the standard of review in utility mergers. The Consumer Advocate also notes favorably that the originally proposed statutory language would give the PUC the latitude to establish reasonable criteria pursuant to this standard for specific mergers, thus keeping in mind the specific context of each proposed merger that may come before it in the future.

The language added in HD1 is taken verbatim from the PUC’s order identifying issues from the NextEra/Hawaiian Electric merger proceeding, docket no. 2015-0022. These issues were specific to that particular merger and would be inapplicable to non-electric utility mergers given the references to electricity rates. HRS § 269-19 applies to mergers or transfers of any type of utility, including private water, private wastewater, telecommunications carriers, interisland water carriers, and motor transportation carriers. Furthermore, the PUC should be given broad discretion in determining specific issues for any utility merger or acquisition as it did for the NextEra/HECO merger. It may not be appropriate to apply these same issues to a cooperative electric utility that may seek to acquire one or more of the HECO Companies.

Thank you for this opportunity to testify.

TESTIMONY OF RANDY IWASE
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII
TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

February 29, 2016
2:05 PM

MEASURE: H.B. No. 2567, Proposed H.D. 1

TITLE: RELATING TO THE PUBLIC UTILITIES COMMISSION

Chair McKelvey and Members of the Committee:

DESCRIPTION:

This measure requires that “substantial net benefit” be the specific standard for the Public Utilities Commission (“Commission”) to consider in the transfer or assignment of a franchise. This measure authorizes the Commission to establish reasonable criteria for specific mergers. This measure also details a number of factors that the Commission is required to consider in determining whether there is a “substantial net benefit”.

POSITION:

The Commission offers the following comments for the Committee’s consideration.

COMMENTS:

The Commission notes that the list of factors for the Commission to consider in determining whether there is a “substantial net benefit” under this proposed H.D. 1 (See p. 4, ln. 3 to p. 7, ln. 8) appears to be virtually identical to the Commission’s Statement of Issues identified in Docket No. 2015-0022, more commonly known as the HECO-NextEra merger proceeding. The HECO-NextEra Statement of Issues identifies specific issues associated with the HECO-NextEra merger. Given that the circumstances of each merger proceeding are unique, it may not be appropriate to examine the exact same issues for every transfer or assignment of a franchise going forward. The Commission should have the discretion and flexibility to determine what issues are relevant to each situation.

Thank you for the opportunity to testify on this measure.

The Honorable Angus McKelvey, Chair
House Committee on Consumer Protection & Commerce

Date of hearing: February 29, 2016
Conference Room 325
Time 2:05 p.m.

RE: **HB 2567 – Relating to the Public Utilities Commission – IN OPPOSITION**

Aloha Chair McKelvey, Vice Chair Woodson and members of the Committee,

My name is Hugh Strom, and I am the Senior Vice President of Aqua Engineers, Inc. (“Aqua”). Aqua is the sole member of Aqua Puhi, LLC, dba Puhi Sewer and Water Company, a public utility providing wastewater service on the island of Kauai. Aqua also manages and operates several public utilities that provide wastewater service on Oahu, Maui, and on the Big Island. Aqua also provides services to water utilities. Nearly all of these water and wastewater utilities are currently owned by developers or large landowners.

Aqua believes the bill is unnecessary, is unclear, and may create unintended consequences, especially as it relates to the acquisition of water and wastewater utilities. Aqua is opposed to HB 2567, but also offers several suggestions for your consideration.

The Public Utilities Commission (the “Commission”) has statutory authority to approve mergers and acquisitions under Hawaii Revised Statutes (“HRS”) §§269-6, 269-7, 269-18 and 269-19. The standard that the Commission applies in reviewing a proposed acquisition is that (1) the acquiring utility is fit, willing, and able to perform the service offered by the utility that is being acquired; and (2) the acquisition is reasonable and in the public interest. The Commission

already has a great deal of discretion under this standard to ensure that a given acquisition is in the public interest by imposing various conditions to its approval.

Aqua also believes that the applicability of the bill is unclear. First, the bill applies to the transfer or assignment of a “franchise”, which is not defined in HRS Chapter 269. This term has been used to apply to the right to operate that was granted by the Hawaii legislature to certain companies providing utility services, such as the electric and gas companies, prior to the time the Commission was authorized to grant utilities the right to operate. It is somewhat unclear whether the bill is intended to apply only to companies that hold such “franchises” or to encompass other utilities, including those issued certificates of public convenience and necessity (“CPCN”) by the Commission. If this committee is inclined to adopt the bill, Aqua believes this ambiguity should be clarified.

Second, the most recent version of this bill adds subsection (d), which contains specific criteria for the Commission to consider in determining whether there is a “substantial net benefit”. These criteria are substantially the same as the issues that the Commission is considering in the NextEra merger proceeding and appear to be directed at a complex acquisition of electric utilities. To the extent the bill can be read to apply to water and wastewater utilities, we have strong reservations that the proposed standard of “substantial net benefits” is likely to inhibit acquisitions. Many water and wastewater utility acquisitions involve either a developer owned system in which the developer no longer wants to be the utility provider, or an existing owner that either cannot or does not want to make the necessary capital investments. In these situations, the acquisitions make sense in terms of having an experienced operator, an entity familiar with Commission rules and procedures, and/or an organization that has the technical,

managerial, and financial capability to be a long-term owner of a water or wastewater utility.

We are concerned that these considerations may not satisfy the proposed “substantial net benefits” standard proposed in the bill. We are also concerned that the criteria in subsection (d), that were designed for the NextEra merger, are not relevant to small water and wastewater utilities. Requiring that an acquiring company provide additional “substantial net benefits” would inhibit acquisitions that the Commission would otherwise find are “reasonable and in the public interest”.

In conclusion, Aqua opposes this bill. If this committee is inclined to adopt the proposed “substantial net benefits” standard, Aqua respectfully requests that this committee make it clear that this standard does not apply to acquisitions of water and wastewater utilities, or, alternatively, that the proposed standard only applies to acquisitions that have a value of more than \$100 million.

Thank you for the opportunity to submit this testimony.

HB 2567 HD1 (Proposed)

RELATING TO THE PUBLIC UTILITIES COMMISSION

**KEN HIRAKI
VICE PRESIDENT-GOVERNMENT & COMMUNITY AFFAIRS
HAWAIIAN TELCOM
February 29, 2016**

Chair McKelvey and members of the Committees:

I am Ken Hiraki, providing comments on behalf of Hawaiian Telcom on HB 2567 HD1 (proposed).

Hawaiian Telcom recommends that for the purpose of consistency the bill be amended on page 3, line 20 as follows:

(c) The specific standard for the public utilities commission to consider in the transfer or assignment of an ***Electric utility company*** shall be a substantial net benefit.

Thank you for the opportunity to testify.

The Honorable Angus McKelvey, Chair
House Committee on Consumer Protection & Commerce

Monday, February 29, 2016
Conference Room 325; 2:05PM

RE: **HB 2567 Proposed HD1 – Relating to the Public Utilities Commission –
IN OPPOSITION**

Aloha Chair McKelvey, Vice Chair Woodson and members of the Committee,

My name is Michael Mares, and I am the General Manager of Hawaii Water Service Company, Inc. (“HWSC”). HWSC and its subsidiaries are public utilities that provide water and/or wastewater service in Ka’anapali and Pukalani on Maui, and Waikoloa Village, the Waikoloa Resort and the Kukio Resort on the Island of Hawaii. HWSC acquired all of these systems from the developers of these areas.

HWSC believes the bill is unnecessary, is unclear, and may create unintended consequences, especially as it relates to the acquisition of water and wastewater utilities. HWSC is opposed to HB 2567, but also offers an amendment for your consideration.

The Public Utilities Commission (the “Commission”) has statutory authority to approve mergers and acquisitions under Hawaii Revised Statutes (“HRS”) §§269-6, 269-7, 269-18 and 269-19. The standard that the Commission applies in reviewing a proposed acquisition is that (1) the acquiring utility is fit, willing, and able to perform the service offered by the utility that is being acquired; and (2) the acquisition is reasonable and in the public interest. The Commission already has a great deal of discretion under this standard to ensure that a given acquisition is in the public interest by imposing various conditions to its approval.

HWSC also believes that the applicability of the bill is unclear. First, the bill applies to the transfer or assignment of a “franchise”, which is not defined in Chapter 269. This term has been used to apply to the right to operate that was granted by the Hawaii legislature to certain companies providing utility services, such as the electric, gas and telephone companies, prior to the time the Commission was authorized to grant utilities the right to operate. It is not clear whether the bill is intended to apply only to companies that hold such “franchises”. If this committee is inclined to adopt the bill, HWSC believes this ambiguity should be clarified.

Second, the most recent version of this bill adds subsection (d), which contains specific criteria for the Commission to consider in determining whether there is a “substantial net benefit”. These criteria are substantially the same as the issues that the Commission is considering in the NextEra merger proceeding and appear to be directed at a complex acquisition of electric utilities.

To the extent the bill can be read to apply to water and wastewater utilities, we have strong reservations that the proposed standard of “substantial net benefits” is likely to inhibit acquisitions. Many water and wastewater utility acquisitions involve either a developer owned system in which the developer no longer wants to be the utility provider, or an existing owner that either cannot or does not want to make the necessary capital investments. In these situations, the acquisitions make sense in terms of having an experienced operator, an entity familiar with commission rules and procedures, and/or an organization that has the technical, managerial, and financial capability to be a long-term owner of a water utility. We are concerned that these considerations may not satisfy the proposed “substantial net benefits” standard proposed in the bill. We are also concerned that the criteria in subsection (d), that were designed for the NextEra merger, are not relevant to small water and wastewater utilities.

Requiring that an acquiring company provide additional “substantial net benefits” would inhibit acquisitions that the Commission would otherwise find are “reasonable and in the public interest”.

Therefore, HWSC opposes this bill. If this committee is inclined to adopt the proposed “substantial net benefits” standard, HWSC respectfully requests that this committee make it clear that this standard does not apply to acquisitions of water and wastewater utilities, or, alternatively, that the proposed standard only applies to acquisitions that have a value of more than \$100 million.

Thank you for the opportunity to submit this testimony.

Committee on Consumer Protection & Commerce
Hearing 2:05pm February 29, 2016

Dear Chair McKelvey, Vice-chair Woodson and Committee Members,

I am writing to voice my support for HB2567.

A utility acquisition should have “substantial net benefit” for all the risk involved. This Bill provides the necessary clarification to protect Hawaii residents.

Sincerely,

Annie Cusick Wood
anniecusick808@gmail.com

Committee on Consumer Protection & Commerce
Hearing Monday February 29, 2016 2:05pm

HB 2567: Establishes "substantial net benefit" as the Public Utilities Commission's standard for a transfer or assignment of a franchise.

Aloha Chair McKelvey, Vice-chair Woodson and members of the committee,

I strongly support HB2567.

We need to clarify the language to assure that any utility acquisition has a "substantial net benefit," not just "absence of harm" as being advocated by NextEra and HECO.

Any change in utility has inherent risk and the new owner will have to recoup the purchase price from ratepayers.

It should not be undertaken unless there is hope that it could actually benefit our state.

Mahalo,

Julianne King
julianneking@hawaii.rr.com
Kailua, Oahu

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 26, 2016 3:15 PM
To: CPCtestimony
Cc: skaye@runbox.com
Subject: *Submitted testimony for HB2567 on Feb 29, 2016 14:05PM*

HB2567

Submitted on: 2/26/2016

Testimony for CPC on Feb 29, 2016 14:05PM 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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 28, 2016 7:01 PM
To: CPCtestimony
Cc: alohamelaniebailey@yahoo.com
Subject: Submitted testimony for HB2567 on Feb 29, 2016 14:05PM

HB2567

Submitted on: 2/28/2016

Testimony for CPC on Feb 29, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Melanie Bailey	Individual	Support	No

Comments: I support HB2567 which requires utility companies in our state to meet the standard of "substantial net benefit" to our State in order for the Public Utilities Commission (PUC) to approve it. "In the public interest" is too vague we should have clear unwavering goals. There are so many reasons to support clean energy, we must ensure every energy decision going forward is in line with our goals. Mahalo, Melanie Bailey 808-277-5121

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 28, 2016 5:53 PM
To: CPCtestimony
Cc: lbc@hawaiiantel.net
Subject: Submitted testimony for HB2567 on Feb 29, 2016 14:05PM

HB2567

Submitted on: 2/28/2016

Testimony for CPC on Feb 29, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lois Crozer	Individual	Support	No

Comments: We need a utility that will follow through on 100% renewable energy by 2045 and one who's goal is not to make a profit but to serve the ratepayers.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 28, 2016 4:35 PM
To: CPCtestimony
Cc: ran4good@gmail.com
Subject: *Submitted testimony for HB2567 on Feb 29, 2016 14:05PM*

HB2567

Submitted on: 2/28/2016

Testimony for CPC on Feb 29, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Erickson	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE

Dear Chair and Committee members,

I would like to thank you for the opportunity to strongly support Bill HB2567. The current law needs clarification in regard to the “do no harm” policy.

This bill is important to protect Hawaii. Thank you for your time.

Sincerely,

Emily Grave

LATE

I support Bill **HB2567**.

There may be some benefits to a merger with NextEra, but I think they are far outweighed by the possible downsides. In particular it is worrisome that the bar they have to meet is so low. That is the old way of doing business. The energy situation is changing very rapidly. I would feel much more comfortable if NextEra or whatever company HECO decided to merge with had a track record of vigorously promoting alternative energy and drawing down reliance on fossil fuels and natural gas. For Hawaii depending on anything that has to be brought here by boat is very high risk. Risks associated with change in ownership should be avoided if there is no likely benefit to our State. Given our distance from the mainland and our small population we need a company that will intensively focus on what is best for us, not try to squeeze us into a business model that suits them but costs us more and puts us at great risk.

Ann Marten

Committee on Consumer Protection & Commerce
Hearing Monday February 29, 2016 2:02pm

LATE

Aloha Chair McKelvey, Vice-chair Woodson and members of the committee,

I strongly support HB2567.

Any utility acquisition must meet the standard of a "substantial net benefit," not just "absence of harm" as being advocated by NextEra and HECO. Please pass this important Bill in order to clarify the standard.

Any change in utility has inherent costs -- the cost of purchase will be repaid by ratepayers.

Our State residents should not bear this additional cost unless there is hope that the change will be of benefit.

Mahalo,

Lisa Marten
HECO Ratepayer

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 28, 2016 5:46 PM
To: CPCtestimony
Cc: cindy.petersen@shawinc.com
Subject: Submitted testimony for HB2567 on Feb 29, 2016 14:05PM

HB2567

Submitted on: 2/28/2016

Testimony for CPC on Feb 29, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Cindy Petersen	Individual	Support	No

Comments: I support HB2567 - utility mergers should be held to a standard to meet substantial net benefit to the state of Hawaii.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

January 25, 2015

Dear Legislators:

I support HB 2567. It is important that our future utility company is committed to providing the people of Hawaii with substantial net benefit. It is not enough for a company to “do no harm”. This is an unacceptable compromise. Changing ownership is risky and financially costly to us, the taxpayers. It minimally will cost us the purchase price of \$3.4 billion dollars. Why would we ever support the cost of new ownership if there is no clear benefit? Please support this bill and the people of Hawaii. We deserve better.

Sincerely,

Brit Reis, MD



LATE

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 28, 2016 4:32 PM
To: CPCtestimony
Cc: myhawaii308@gmail.com
Subject: *Submitted testimony for HB2567 on Feb 29, 2016 14:05PM*

HB2567

Submitted on: 2/28/2016

Testimony for CPC on Feb 29, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jonathan Reis	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 28, 2016 5:46 PM
To: CPCtestimony
Cc: sksb@earthlink.net
Subject: Submitted testimony for HB2567 on Feb 29, 2016 14:05PM

HB2567

Submitted on: 2/28/2016

Testimony for CPC on Feb 29, 2016 14:05PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Karen Simmons	Individual	Support	No

Comments: Testimony for HB2567 - Support I support HB 2567 and ask that you do the same. With the possible transition to Nextera, it is important that the standards of "in the public interest" are clarified to protect the public and be of benefit to the State. Thank you, Karen Simmons

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov