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To: The Honorable Glenn Wakai, Chair
and Members of the Senate Committee on Energy, Economic Development, and Tourism

Date: Monday, February 11, 2019
Time: 3:15 P.M.
Place: Conference Room 414, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 1163, Relating to Renewable Energy

The Department of Taxation (Department) appreciates the intent of S.B. 1163, but has concerns about its ability to administer the provisions of this bill and offers the following comments for the Committee's consideration.

S.B. 1163 makes significant amendments to section 235-12.5, Hawaii Revised Statutes (HRS), which governs the Renewable Energy Technologies Income Tax Credit (RETITC). A summary of key provisions are as follows:

- Eliminates the term "renewable energy technologies" and recognizes three general categories of "systems" that are eligible for tax credits: solar energy systems, energy storage systems, and wind energy systems;
- Further divides solar energy systems into systems used exclusively to heat water and systems that are used primarily to generate electricity;
- Changes the RETITC percentages (up to respective applicable cap amounts) as follows:
- For each solar energy system used exclusively to heat water and first placed into service in the State by a taxpayer during the taxable year, 35% of the basis up to the following applicable cap amounts:
    - $2,250 per system for single-family residential property;
    - $350 per unit per system for multi-family residential property, with a provision that if the multi-family residential property is classified as low-income, affordable housing, or senior housing, the single-family cap shall apply per unit; and
    - $250,000 per system for commercial property.
- For each solar energy system used primarily to generate electricity:
    - 25% of the basis for systems first placed in service after December 31, 2019, and before January 1, 2025; 20% of the basis for systems first placed into service after December 31, 2024, and before January 1, 2026; and 15% of the basis for systems

first placed in service after December 31, 2025, up to the following applicable cap amounts:

- $5,000 per system for single-family residential property, provided that if all or a portion of the system is used to fulfill the substitute renewable energy technology requirement pursuant to section 196-6.5(a)(3), the credit shall be reduced by 25% of the basis or $2,250, whichever is less;
- $350 per unit per system for multi-family residential property, with a provision that if the multi-family residential property is classified as low-income, affordable housing, or senior housing, the single-family cap shall apply per unit; and
- $500,000 per system for commercial property, provided that for either a system that has an executed customer service contract dated prior to June 30, 2018 and is installed and first placed into service before December 21, 2019, or for a power purchase agreement dated prior to December 31, 2019 that is first placed into service before December 31, 2024, the percentage received shall be thirty-five per cent of the basis for the solar energy system, up to the cap of $500,000.

- For each energy storage system not included in the basis of a solar or wind energy system:
  - 25% of the basis for systems first placed in service after December 31, 2019, and before January 1, 2025; 20% of the basis for systems first placed in service after December 31, 2024, and before January 1, 2026; and 15% of the basis for systems first placed in service after December 31, 2025, up to the following applicable cap amounts:
    - $5,000 per system for single-family residential property;
    - $350 per unit per system for multi-family residential property, with a provision that if the multi-family residential property is classified as low-income, affordable housing, or senior housing, the single-family cap shall apply per unit; and
    - $500,000 per system for commercial property.
- For each wind energy system, 20% of the basis up to the applicable cap amounts:
  - $1,500 per system for single-family residential property; provided that if all or a portion of the system is used to fulfill the substitute renewable energy technology requirement pursuant to section 196-6.5(a)(3), the credit shall be reduced by 20% of the basis or $1,500, whichever is less;
  - $200 per unit per system for multi-family residential property; and
  - $500,000 per wind energy system for commercial property, provided that for either a system that has an executed customer service contract dated prior to June 30, 2018 that is installed and first placed into service before December 31, 2019, or for a power purchase agreement dated prior to December 31, 2019 that is first placed into service before December 31, 2024, the percentage received shall be thirty per cent of the basis for the wind energy system, up to the cap of $500,000.
- Provides that multiple owners of a single system shall be entitled to a single tax credit, apportioned between the owners in proportion to their contributions to the cost;
- For partnerships, S corporations, estates, and trusts, allows the credit for every eligible system that is installed and placed in service in the State by the entity, with costs determined at the entity level and the distribution and share of credit determined pursuant

to section 704(b) of the Internal Revenue Code (IRC);

- Defines "basis" as costs related to the solar, wind, or energy storage system, including accessories, energy storage, installation, costs incurred for the physical support of the system, such as racking and mounting equipment, and costs incurred to seal or otherwise return a roof to its pre-installation condition; but not including the cost of unrelated consumer incentive premiums, costs for which another tax credit is claimed, or ancillary repair or construction costs incurred in conjunction with installing the system, such as re-roofing a property;
- States that the use of "basis" in the statute shall be consistent with use of "basis" in section 25D or section 48 of the IRC;
- Defines "commercial energy storage system" as any one system that has a total output capacity of at least one thousand kilowatts;
- Defines "energy storage system" as any identifiable facility, equipment, or apparatus, such as a battery, grid-interactive water heater, ice storage air conditioner, or similar, that is permanently fixed to a site and electrically connected to a site distribution panel by means of an installed wiring, and that receives, stores, and delivers electricity generated from various sources;
- States that "first placed in service" has the same meaning as in 26 C.F.R. § 1.167(a)-11(e)(1);
- Adds language to the definition of "solar or wind energy system" to provide that the construction, reconstruction, or erection of the system be completed by the taxpayer, or that the system is "acquired" by the taxpayer if the original use of the system commences with the taxpayer;
- Allows a taxpayer to reduce by 30% the eligible credit amount for solar and wind energy systems and make the credit refundable if the reduced amount exceeds the amount of income tax payment due from the taxpayer, if taxpayer elects to do so on the taxpayer's return for the taxable year during which the system was installed and placed into service;
- Allows the credit to be refundable for any solar or wind energy storage system, without discount, if all of the taxpayer's income is from pensions and exempt from taxation under sections 235-7(a)(2) or (3), HRS, or if the taxpayer's adjusted gross income is $20,000 or less (or $40,000 or less if married filing jointly);
- Allows a separate election or non-election of refundability for each separate solar or wind energy storage system that generates a credit;
- Disallows the credit for the portion of the renewable energy technology system required by section 196-6.5 that is installed and first placed into service on any newly constructed single-family residential property authorized a building permit issued on or after January 1, 2020;
- States that the credit shall be construed in accordance with federal regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the IRC;
- Allows for planned community associations, condominium associations, and cooperative housing corporations to claim the credit in its own name for systems placed into service and located on common areas;
- Prohibits the credit from being allowed to any government agency or instrumentality;
- Terminates authorization of the credit for taxable years ending after December 31, 2037;
- Effective on July 1, 2019; and
- Applies to taxable years beginning after December 31, 2019.

First, the Department notes that the term "system," which is not defined in Hawaii income tax law, has caused much confusion and uncertainty for taxpayers and industry participants and has resulted in a much larger than anticipated number of RETITC claims and revenue lost. The ambiguity in the statute was ultimately addressed by the Department's enactment of administrative rules pertaining to the RETITC in November 2012. (See sections 18-235-12.5-01 through 18-235-12.5-06, Hawaii Administrative Rules (HAR)).

The Department notes that the addition of the new category of "energy storage systems," without a more detailed definition or guidelines for required energy capacity or output, may create new uncertainty for taxpayers and industry. The Department strongly suggests that the measure be amended to include definitions and provisions that will provide sufficient guidance to administer the RETITC without the need for administrative rules. Without sufficient clarity, this tax credit could result in larger than expected revenue losses, as seen previously with the RETITC.

If the intent of the Legislature is to make Hawaii's tax credit more similar to the federal tax credit, the Department suggests simply allowing taxpayers to claim a credit equal to a percentage of the federal tax credit available for renewable energy property, without applying a cap. As explained above, the caps have caused confusion for taxpayers and administrative difficulty for the Department, resulting in unintended revenue losses for the State.

Second, the Department notes that the tax credit in this measure is refundable in certain circumstances. As a general matter, the Department prefers nonrefundable credits because refundable credits create a higher potential for improper claims and abuse. The Department therefore recommends that this credit be made non-refundable.

Third, the Department notes that there is no definition or explanation for what constitutes low-income housing, affordable housing, or senior housing, as it relates to whether to apply the single-family residential property cap versus the multi-family residential property cap for certain categories of system under the credit. The Department recommends either defining these terms or clarifying how their qualification will be determined. This will help ensure efficient tax administration and prevent taxpayer confusion.

Fourth, the Department notes that a government agency is only deemed to be a taxpayer for employment tax (wage withholding) purposes. As such, subsection (k) which prohibits a government from claiming the credit is not necessary.

Finally, if the Committee wishes to advance this measure, the Department notes that it is able to implement S.B. 1163, with current application to taxable years beginning after December 31, 2019. This will allow the Department sufficient time to make the necessary form and computer system changes.

Thank you for the opportunity to provide comments.

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: TAX CREDIT

BILL NUMBER: SB 1163

INTRODUCED BY: INOUYE, BAKER, S. CHANG, MORIWAKI, RUDERMAN, Fevella, Kanuha, Kim, Riviere, Shimabukuro, L. Thielen, Wakai

EXECUTIVE SUMMARY: Amends the renewable energy technologies income tax credit to change limitations for certain technology types. Provides increased caps for photovoltaic property that is grid-connected and incorporates energy storage system. Generally, the credit is being phased down, perhaps in recognition that the technology involved is no longer new. If approved, the credit would be an indeterminate expenditure of public dollars out the back door, and could carry with it large administrative costs.

SYNOPSIS: Amends HRS section 235-12.5, to be retitled the solar energy, energy storage, wind energy system income tax credit, to allow credits for each energy system, as follows:

For each solar energy system used exclusively to heat water and is installed and first placed in service in the State by a taxpayer during the taxable year or is approved in the taxable year and is placed in the following taxable year: 35% of the basis up to the applicable cap amount, which is determined as follows: (A) $2,250 per solar energy system for single-family residential property; (B) $350 per unit per solar energy system for multi-family residential property; and (C) $250,000 per solar energy system for commercial property.

For each solar energy system used primarily to generate electricity and is installed and first placed in service in the State by a taxpayer during the taxable year or is approved in the taxable year and is placed in the following taxable year, the credit is a certain percentage of the basis up to the applicable cap amount, which is determined as follows: (A) $5,000 per solar energy system for single-family residential property, except that if all or a portion of the property is used to fulfill the substitute renewable energy technology requirement in section 196-6.5(a)(3), HRS, the credit will be reduced by the credit rate times basis or $2,250, whichever is less; (B) $350 per unit per solar energy system for multi-family residential property; and (C) $500,000 per solar energy system for commercial property. The credit rate is 25% for calendar years 2019-2024, 20% for calendar years 2025-2026, and 15% thereafter.

For each energy storage system installed and first placed in service in the State by a taxpayer during the taxable year or is approved in the taxable year and is placed in the following taxable year, if the cost of the energy storage system is not also included in the creditable basis of a solar or wind energy system: a certain percentage of the basis up to the applicable cap amount, which is determined as follows: (A) $5,000 per energy storage system for single-family residential property; (B) $350 per unit per energy storage system for multi-family residential property; and

(C) $500,000 per energy storage system for commercial property. The credit rate is 25% for calendar years 2019-2024, 20% for calendar years 2025-2026, and 15% thereafter.

A wind energy system is also creditable, and the credit rate is 20% basis up to the applicable cap amount, which is determined as follows: (A) $1,500 per wind energy system for single-family residential property, except that if all or a portion of the property is used to fulfill the substitute renewable energy technology requirement in section 196-6.5(a)(3), HRS, the credit will be reduced by 20% of basis or $1,500, whichever is less; (B) $200 per unit per wind energy system for multi-family residential property; and (C) $500,000 per wind energy system for commercial property.

Defines "basis" on which the credit is based as costs related to the solar energy, wind energy, or energy storage system, including accessories, energy storage, and installation, but does not include the cost of consumer incentive premiums unrelated to the operation of the energy system or offered with the sale of the energy system and costs for which another credit is claimed under this chapter. Any cost incurred and paid for the repair, construction, or reconstruction of a structure in conjunction with the installation and placing in service of a solar or wind energy system, such as the reroofing of single-family residential property, multi-family residential property, or commercial property, shall not constitute a part of the basis for the purpose of this section; provided that costs incurred for the physical support of the solar or wind energy system, such as racking and mounting equipment and costs incurred to seal or otherwise return a roof to its pre-installation condition shall constitute part of the basis for the purposes of this section. States that basis shall be consistent with the use of basis in section 25D or section 48 of the Internal Revenue Code.

Defines "energy storage system" as any identifiable facility, equipment, apparatus, or the like, including a battery, grid-interactive water heater, or ice storage air conditioner, that is permanently fixed to a site and electrically connected to a site distribution panel by means of installed wiring, and that receives electricity generated from various sources, stores that electricity as electrical, chemical, thermal, or mechanical energy, and delivers the energy back to an electric utility or the user of the electric system at a later time.

Defines "solar or wind energy system" as any identifiable facility, equipment, apparatus, or the like that converts solar or wind energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation, if (1) the construction, reconstruction, or erection of the solar or wind energy system is completed by the taxpayer; or (2) the solar or wind energy system is acquired by the taxpayer if the original use of the solar or wind energy system commences with the taxpayer.

The tax credit for solar or wind energy properties is nonrefundable by default, but a taxpayer may elect to give up 30% of the credit to make it refundable. Alternatively, a taxpayer whose adjusted gross income is $20,000 or less for single filers or $40,000 or less for joint filers may elect to make the tax credit refundable without discount. If a taxpayer receives the nonrefundable credit and is unable to use all of it, the unused credit may be carried forward indefinitely until exhausted. Spouses not filing a joint return may only make the election to the

extent that they would have been able to make the election if they had filed a joint return. An election once made is irrevocable.

Provides that the tax credit under this section shall be construed in accordance with Treasury Regulations and judicial interpretations of similar provisions in sections 25D, 45, and 48 of the Internal Revenue Code.

Provides that a planned community association, condominium association of owners, or cooperative housing corporation may claim the tax credit under this section in its own name for property or facilities placed in service and located on common areas.

States that no credit shall be allowed to any federal, state, or local government or any political subdivision, agency, or instrumentality thereof.

States that no credit shall be authorized for taxable years ending after December 31, 2037.

Makes technical and conforming changes.

EFFECTIVE DATE: Taxable years beginning after December 31, 2019.

STAFF COMMENTS: Lawmakers need to keep in mind two things. First, the tax system is the device that raises the money that they, lawmakers, like to spend. Using the tax system to shape social policy merely throws the revenue raising system out of whack, making the system less than reliable as there is no way to determine how many taxpayers will avail themselves of the credit and in what amount. The second point to remember about tax credits is that they are nothing more than the expenditure of public dollars, but out the back door. If, in fact, these dollars were subject to the appropriation process, would taxpayers be as generous about the expenditure of these funds when our kids are roasting in the public school classrooms, there isn't enough money for social service programs, or our state hospitals are on the verge of collapse?

If lawmakers want to subsidize the purchase of this type of technology, then a direct appropriation would be more accountable and transparent.

Furthermore, the additional credit would require changes to tax forms and instructions, reprogramming, staff training, and other costs that could be massive in amount. A direct appropriation, or adding on to an existing program such as Hawaii Energy, may be a far less costly method to accomplish the same thing.

Digested 2/7/2019

THE ALLIANCE FOR SOLAR CHOICE

SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

February 11, 2019, 3:15 P.M.
(Testimony is 1 page long)

TESTIMONY IN OPPOSITION TO SB 1163

Aloha Chair Wakai and Members of the Committee:

The Alliance for Solar Choice (TASC) appreciates the intent of this measure, but respectfully opposes SB 1163. This bill would allow energy storage to take advantage of the existing renewable energy technology systems tax credit, and begins a staged reduction of the credit over time.

Iterations of this measure have been introduced for nearly ten years. These measures repeatedly fail in conference committee. There is no reason to expect a different result this year, particularly with a tight fiscal year.

Uncertainty about the the renewable energy tax credit has a direct and adverse impact on the solar industry: customers frequently decide to wait and see what will happen with the credit, thus putting off sales for months. To the extent installation already takes at least 4-6 months, this can put off potential business until next year, creating an adverse impact on the solar industry and slowing Hawaii's progress towards its clean energy goals.

Further, the federal income tax credit is scheduled to step down at the end of this year,[1] thus meaning it is in the interest of Hawaii residents to install solar this year. Any action that slows this adoption — such as a lengthy debate about Hawaii's existing solar tax credit — is adverse to Hawaii customers.

TASC welcomes a discussion about the future of Hawaii's solar tax credit. Nonetheless, in light of the federal income tax credit step down, this is not an ideal year for that discussion. We suggest deferring this matter until next year.

Mahalo for the opportunity to testify.

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[1] *See, e.g.,* https://www.energy.gov/savings/residential-renewable-energy-tax-credit

TESTIMONY BEFORE THE SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

S.B. 1163

Relating to Renewable Energy

Monday, February 11, 2019
3:15 PM, Agenda #2
State Capitol, Conference Room 414

Kaiulani Shinsato
Director, Distributed Energy Resources
Hawaiian Electric Company, Inc.

Chair Wakai, Vice Chair Taniguchi, and Members of the Committee,

My name is Kaiulani Shinsato and I am testifying on behalf of Hawaiian Electric Company, Inc. and its subsidiaries, Hawai'i Electric Light Company, Inc. and Maui Electric Company, Limited (collectively, the "Hawaiian Electric Companies"). The Hawaiian Electric Companies provide the following **comments and request amendments** regarding S.B. 1163, Relating to Renewable Energy.

The Hawaiian Electric Companies support the intent of S.B. 1163 of gradually ratcheting down tax credits for renewable energy technologies. However, the bill as presently drafted does not require these systems to be grid-connected as a condition to receive the tax credits. More specifically, S.B. 1163 defines "grid-connected" to mean that "the individual or corporate taxpayer has obtained an approved interconnection agreement from an electric utility for the solar energy system or whose facility does not have an existing tie to the electric grid." S.B. 1163, however, does not take the next step to require that the systems identified in categories (1) – (4) be "grid-connected."

Without this requirement, the bill could inadvertently incentivize customers to take all or a portion of their loads off the system. This detracts from the State's goal of 100% clean energy by 2045 because to reach such a high level of renewables as a State, all large-scale *and distributed resources at customers' premises* will need to be connected to the grid and contributing in coordination as a grid resource. Likewise, the Hawaiian Electric Companies will soon be broadening its offering of demand response programs for customers; however, demand response as a resource can only benefit customers and add value to the electric system if the renewable energy systems are grid-connected. For all these reasons, the Companies' recommend that S.B. 1163 include a "grid-connected" requirement in each category (1) – (4); each category would start with the following: ". . . For each grid-connected . . ."

In addition, the Companies note that there is an equity issue underlying the bill in that the same segment of customers will continue to receive the benefit of tax credits as they expand their systems to add storage. For these reasons, we respectfully request consideration of our proposed amendments for S.B. 1163. Thank you for this opportunity to testify.

COOL GREEN CLEAN™
Honolulu

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Testimony on
S.B. 1163
RELATING TO RENEWABLE ENERGY TAX CREDITS
Before the
State Senate
COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM
By
Eric Masutomi, CEO and President
Honolulu Seawater Air Conditioning, LLC

Honolulu Seawater Air Conditioning (HSWAC) appreciates the opportunity to testify on this measure.

While deferring specific comments to others more directly impacted by the proposed amendments, should you choose to advance this measure we strongly urge you to include – in addition to energy storage – a renewable energy income tax credit for building owners connecting to a seawater air conditioning district cooling system.

The significance of seawater as a renewable energy resource cannot be understated. HSWAC's Downtown Honolulu District Cooling System, alone, is the largest energy efficiency project to be undertaken in the State. When it begins operation, HSWAC's district cooling system will eliminate the need for 178,000 barrels of oil per year, saving enough electricity to power more than 10,000 homes annually - equivalent, by comparison, to 142,200 solar panels. The system will provide an alternative to using imported fossil fuels to cool downtown Honolulu, which will decrease the island's environmental footprint and the state's oil dependency.

Deepwater district cooling systems have been successfully implemented in numerous localities throughout the U.S., Canada and Europe. Despite this proven record of success, our experience has shown that when district energy systems such as that being developed by HSWAC are introduced in a community, potential customers are frequently wary about the costs of converting to the new system, the risk of higher costs in the initial years of operation and the uncertainties of adapting to a new system. As in the case of solar and wind technology, the availability of such credits is effective in not only ameliorating such concerns, but in accelerating the State's transition to a renewable energy future.

Such credits will assist potential customers of seawater air conditioning district cooling systems in making the critical decision to eliminate existing inefficient cooling systems (currently responsible for more than forty percent of a building's electricity consumption) in favor of utilizing a district cooling system that takes advantage Hawaii's abundant surrounding ocean waters. With the potential to reduce electricity consumption used for air conditioning by up to 75%, this technology promises to significantly contribute to the State's sustainability objectives and reduce our dependence on imported fossil fuels.

Discounting the substantial energy and environmental benefits associated with seawater cooling, from a cost-benefit standpoint, the seawater cooling system credits that might be allowed are modest when weighed against the projected economic benefits, including: a) over $300 million in construction spending, b) 1,348 construction-related jobs, and c) over $55 million in net increase in State revenues over 25 years from GET and income taxes.[i] In addition, it would create long-term employment opportunities and establish the State as a leading authority on the development and installation of seawater air conditioning systems throughout the Asia-Pacific region. Other local economic benefits would accrue from money that stays in Hawaii and is not exported outside the State to purchase oil.

The State Legislature should be applauded for its foresight in the establishing these renewable energy tax credits to promote Hawaii's transition to a clean energy future. Amending S.B. 1163 to expand eligibility of the credits to users of seawater cooling technology is consistent with this objective.

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[i] Source: Analysis of Honolulu Seawater Air Conditioning Economic Benefits, John M. Knox and Associates Inc., February 15, 2017.

Clearway Energy Group
100 California Street, Floor 4
San Francisco, CA 94111

clearwayenergygroup.com

February 11, 2019

Via Electronic Submittal

Committee on Energy, Economic Development and Tourism
Senator Glenn Wakai, Chair
Senator Brian T. Taniguchi, Vice Chair

Monday, February 11, 2019
3:15 pm
State Capitol, Room 414

Nicola Park
Origination Manager, Clearway Energy Group

In support of SB1163
Relating to Renewable Energy

Chair Wakai, Vice Chair Taniguchi and Members of the Committee:

Good afternoon. My name is Nicola Park, Origination Manager for Clearway Energy Group. I am here today to support SB1163.

Clearway Energy Group is one of the largest clean energy companies in the United States. Clearway was formed in August 2018 with the sale of NRG Energy's renewables division; the same team that has been working in Hawai'i under the NRG name has continued to work seamlessly as Clearway.

On Oahu, Clearway has constructed three utility scale solar projects that are in the final stages of commissioning. Additionally, Clearway has two utility scale solar projects in development that recently executed 20-year Power Purchase Agreements (PPAs) with Hawaiian Electric. The two projects – Waiawa Solar Power and Mililani I Solar – incorporate battery storage that will provide flexibility and resiliency to the electric grid by storing solar energy during the day and discharging it during the evening peak.

Ultimately, the five Clearway solar projects will generate 185 megawatts (MW) of low-cost renewable energy, equal to that used by over 62,000 homes on Oahu in a year. The projects advance the State's renewable energy goal of 100% by 2045 while saving ratepayers on their monthly bills.

Tax Credit Eligibility for Projects with Signed Power Purchase Agreements

Clearway supports the provisions of SB 1163 that extend eligibility for the State Tax Credit under current law to projects that have a power purchase agreement dated prior to December 31, 2019, and are placed in service by December 31, 2024. As part of the competitive bidding process with Hawaiian Electric, Clearway and other bidders were required to pursue all available State and Federal tax credits and pass the full benefit of such tax credits through to ratepayers in the PPA price. Bidders were also required to assume eligibility for the State Tax Credit as it exists today, rather than assuming any change in law. The competitive power prices that Clearway was able to offer for our newly awarded projects were based on this assumption of taking the State tax credit under current law. The benefit of the tax credit flows through to Oahu ratepayers, since they will receive solar energy at a significantly reduced price with the incorporation of the State tax credit.

Importantly, Clearway will not be able to apply for the refund to receive this credit until after the projects are commercially operational, which is projected to occur in late 2021. This means the credits would be taken on tax returns filed in early 2022. As a result, these projects would be at risk for any change in law that might reduce the value of the credit between now and 2022. In order to secure financing and construct the projects, we will need certainty that the projects will be eligible for the tax credit under the current law.

For that reason, it is important that any change in law provides projects like ours with the option of receiving the tax credit as it exists today. We appreciate that the current bill includes language to this effect.

Technical Revisions to Definitions

Currently, businesses receiving the tax credit for renewable energy systems on commercial property must rely on guidance issued by the Department of Taxation that clarifies how the credit is calculated. Clearway suggests incorporating more of this definition into statute to remove any uncertainty about the calculation of the credit.

Additional clarity is particularly important for energy storage systems. The bill as written defines energy storage systems in terms of their maximum instantaneous output (kilowatts); however, the size of an energy storage system is more accurately measured

based on the system's storage capacity (kilowatt-hours, or kWh). Clearway suggests a change in definition so that the tax credit would scale based on storage capacity (kWh).

Clearway hopes that these comments are helpful in informing consideration of SB 1163, and we look forward to answering any questions you might have on our testimony.