

TESTIMONY OF
LEODOLOFF R. ASUNCION, JR.
CHAIR, PUBLIC UTILITIES COMMISSION
STATE OF HAWAII

TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

February 21, 2023
9:30 a.m.

Chair Keohokalole, Vice-Chair Fukunaga, and Members of the Committee:

MEASURE: S.B. No. 477

TITLE: RELATING TO THE PUBLIC UTILITIES COMMISSION.

DESCRIPTION: Requires the public utilities commission to complete its review and issue a decision within nine months from the date that a public utility, other than an investor-owned electric utility company, files its completed application seeking approval for a merger, consolidation, acquisition, or other change of control and within twelve months from the date of the application for an investor-owned electric utility company.

POSITION:

The Public Utilities Commission (“Commission”) offers the following comments for consideration.

COMMENTS:

The Commission appreciates the intent of this measure to provide for the timely review by the Commission of applications by public utilities seeking Commission authorization for a merger, consolidation, acquisition, or other change of control.

The Commission is concerned that this measure may hamper the Commission’s ability to make an informed decision on applications by public utilities seeking Commission authorization for a merger, consolidation, acquisition, or other change of control. If any of the state’s larger public utilities are involved, the nine-month and twelve-month timelines imposed on the Commission in this bill may not be sufficient time for the Commission to determine if the public will continue to receive safe, reliable, and adequate service as a result of the merger, consolidation, acquisition, or other change of control given the scale of those public utilities’ operations. Such a decision from the Commission

can be a significant undertaking, which requires a discovery phase with the opportunity for all stakeholders to participate and careful examination and analysis of a public utility's ability, fitness, and willingness to serve, all of which requires more time the larger the public utility in question is. Additionally, for larger public utilities, many times an evidentiary hearing is conducted with all parties, intervenors, and participants.

The Commission is also concerned that the timeframes imposed on the Commission in this bill may not afford parties, intervenors, and participants in any dockets related to a merger, consolidation, acquisition, or other change of control adequate due process or a meaningful opportunity to be heard. All parties, intervenors, and participants in a docket have, to various degrees, the ability to conduct discovery and present statements of positions regarding the public utility's application. Applications related to a merger, consolidation, acquisition, or other change of control involving Hawaii's larger public utilities often attract numerous intervenors and participants from the community, and as the number of parties, intervenors, and participants rises so too does the amount of time necessary to ensure everyone has adequate due process and a meaningful opportunity to be heard.

The Commission is dedicated to completing its reviews of any applications seeking approval for a merger, consolidation, acquisition, or other change of control as timely as possible, without compromising the thorough and wide-ranging analysis that is necessary in making decisions of this nature. The Commission also remains committed to ensuring that all parties, intervenors, and participants in any such dockets are afforded adequate due process and a meaningful opportunity to be heard.

While the Commission does not believe this measure would be in the public interest, should the Legislature adopt the proposed timelines, the Commission suggests that it would be helpful to explain any situations in which a decision was not rendered within the requested timelines. The Commission proposes the addition of the following language for that purpose.

If a decision is rendered after the relevant nine- or twelve-month period, the Commission shall report in writing, on paper or electronically, the reasons therefor to the legislature within thirty days after rendering the decision.

Thank you for the opportunity to testify on this measure.



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JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, February 21, 2023
9:30 a.m.
Conference Room 229

On the following measure:
S.B. 477, RELATING TO THE PUBLIC UTILITIES COMMISSION

Chair Keohokalole and Members of the Committee:

My name is Dean Nishina, and I am the Acting Executive Director for the Department of Commerce and Consumer Affairs' (Department) Division of Consumer Advocacy. The Department offers comments on this bill.

The purpose of this bill is to require the Public Utilities Commission (Commission) to complete its review and issue a decision within nine months from the date that a public utility, other than an investor—owned electric utility company, files its completed application seeking approval for a merger, consolidation, acquisition, or other change of control and within twelve months from the date of the application for an investor-owned electric utility company.

The intent of this bill is to expedite the timeline for Commission review of applications requesting approval for a merger, consolidation, acquisition, or other change of control, but the Department offers that imposing a strict deadline takes away flexibility in establishing the procedural schedule that allows the appropriate scrutiny depending on

the complexity of issues associated with a proposed merger, consolidation, acquisition, or other change of control. If such flexibility is no longer available, that may not be in the consumers' interests. Such transactions are often complex, especially when there may be affiliated entities that may raise questions about possible subsidies between the regulated company and other affiliated companies and/or whether there may be market control concerns.

The Department acknowledges that the proposed measure allows a distinction between every other industry and company by indicating that only an investor-owned electric utility transaction, which is the Hawaiian Electric companies, can have twelve months for review whereas every other qualifying utility transaction would need to be reviewed within nine months. The Department offers that the last proposed transfer of control for the only investor-owned electric utility took more than eighteen months but given the importance of the transaction to the State related to clean energy goals, is the largest regulated utility, and there were nearly thirty parties to that docket, to name a few factors. Restricting the time available to review the proposed transaction could raise due process issues if a party believes that there was insufficient allowance to support its position in a proceeding.

The Department notes that the Commission took *less than* twelve months to issue a decision on the recent acquisition of The Gas Company, LLC (dba Hawaii Gas) in Docket No. 2021-0098. This proceeding also involved the review of clean energy and decarbonization objectives, a utility that serves the entire state, and had affiliate and intracompany allocations issues. In contrast to the transaction involving the Hawaiian Electric companies, there were only a handful of parties in the proceeding, which mitigated the need for an extended review and procedural steps that might have been required if there were more parties.

Finally, the Department notes that for less complex mergers, consolidations, acquisitions, or other changes of control, the Commission has taken far less time to review and approve such transactions. For instance, applications requesting approval of proposed transfers of control involving less complex transactions in Docket Nos. 2021-

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0110, 2022-0146, and 2022-0151 resulted in a Commission order closing the docket within three, two, and one months, respectively

The considerations in a given application for merger, acquisition, or change of control are varied and complex, and the Department respectfully requests that this committee take note of the needed flexibility in addressing such transactions and hold this measure.

Thank you for the opportunity to testify on this bill.



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COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

DATE: Tuesday, February 21, 2023
TIME: 10:00 AM
PLACE: Conference Room 229

SB 477 RELATING TO THE PUBLIC UTILITIES COMMISSION.

OPPOSE

Aloha Chair Keohokalole, Vice Chair Fukunaga and Members of the Committee

Life of the Land is Hawai'i's own energy, environmental and community action group advocating for the people and `aina for 53 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

NextEra proposed buying the HECO Companies. The PUC proceeding involved 28 parties and participants and took 18 months to complete (Jan. 26, 2015-July 15, 2016). The proposed bill would have chopped off the process mid-stream resulting in confusion.

Mahalo

Henry Curtis

Written Statement of
Jeannine Souki
Senior Manager – Government & Regulatory Affairs

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

February 21, 2023

9:30 a.m.

SUPPORT FOR:

S.B. 477 – RELATING TO THE PUBLIC UTILITIES COMMISSION

To: Chair Keohokalole Vice-Chair Fukunaga , and Members of the Committee
Re: Testimony providing support for SB 477

Aloha Honorable Chair, Vice-Chair, and Committee Members:

Thank you for this opportunity to provide testimony in support of SB 477, which requires the Hawaii Public Utilities Commission to complete its review and issue a decision within nine months from the date that a public utility, other than an investor-owned electric utility company, files its completed application seeking approval for a merger, consolidation, acquisition, or other change of control.

Hawaiian Telcom strongly supports this measure which will help to ensure that change of control and merger applications will be processed in a timely manner. In 2009, the Hawaii State Legislature recognized the competitiveness of the telecommunications market by declaring retail telecommunications services as fully competitive. The telecommunications market is highly competitive both in terms of consumer and business service offerings and workforce talent. There are currently more than 200 companies authorized by the Hawaii Public Utilities Commission to provide telecommunications services in Hawaii.

While our preference would be for a shorter approval time, we believe nine months is reasonable to ensure a thorough review of these applications by the Commission and intervenors especially for companies in highly competitive industries such as telecommunications, where there are many services providers and not just a single monopoly provider of service. Greater certainty on the maximum length of time it will take to process change of control or merger applications will be extremely valuable so that we do not lose customers or employees.

Hawaiian Telcom stands ready to work with your Committee, the Hawaii Public Utilities Commission, Office of Consumer Advocacy, other regulated companies, and stakeholders to address any concerns with this legislation.

Hawaiian Telcom strongly supports HB 477 and respectfully requests your Committee to pass this measure.

