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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Tuesday, February 20, 2024
9:35 a.m.
Conference Room 229**

**On the following measure:
S.B. 2091, S.D. 1, RELATING TO PUBLIC UTILITIES**

WRITTEN TESTIMONY ONLY

Chair Keohokalole and Members of the Committee:

My name is Michael Angelo, and I am the Executive Director of 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: (1) require all telecommunications service providers to communicate relevant information relating to the deenergization of electrical lines to public safety or emergency response offices for the affected areas; (2) require all electric utilities to operate electrical lines and equipment in a manner that shall minimize the risk of catastrophic wildfire posed by the electrical lines and equipment; and (3) require each electric utility to prepare a wildfire mitigation plan and protocols for deenergizing electrical lines.

The Department strongly supports public safety or emergency response offices obtaining access to information related to deenergization of electrical lines. The

Department offers that the potential to use existing notification processes to generate the notifications contemplated by this bill should be undertaken as a potential means for minimizing implementation costs. For example, the Wireless Emergency Alerts (WEA) system allows federal, state, and local government agencies to send alerts during critical emergency situations, such as those involving imminent threats to safety, life, or recommendations for saving lives and property.¹

The Department supports requiring electric utility companies to prepare and file a wildfire mitigation plan for approval with the Commission, which shall include specific details on how electric utility companies intend to construct, maintain, and operate electrical equipment in a manner to minimize risks during catastrophic wildfires. The Department offers, however, that determinations of how the electric utility companies should construct, maintain, and operate their electrical equipment in a manner to minimize risks should be undertaken as part of holistic review of the resilience of the State's electrical system regarding hazardous conditions including, but not limited to, wildfires, high wind events, and flooding. Such a process should explore industry standards regarding wildfire prevention, and more generally, hazard mitigation. Significantly, the process should also build upon previous stakeholder driven efforts such as the work performed by the Resilience Working Group, which was part of Hawaiian Electric's Integrated Grid Planning Process.²

Given Hawaii's state-wide risk to a multitude of hazards, the Department supports a holistic system-wide approach to reducing risk from those hazards and is supportive of prioritizing safety and reliability during a range of natural hazards and a process that incorporates state-wide stakeholder feedback. To that end, the Department notes our recommendation in Docket No. 2022-0135, regarding Hawaiian Electric Company's Climate Adaptation Transmission and Distribution Resilience Program, recommending that the Commission:

¹ See <https://www.honolulu.gov/dem/preparedness/stay-informed.html>.

² See e.g., Resilience Working Group Report for Integrated Grid Planning: <https://www.hawaiianelectric.com/a/7883>

open a new docket under Hawaii Revised Statutes § 269-7 to assess the vulnerabilities of the systems of Hawaii's regulated utilities to threats and disasters, whether they be manmade or caused by extreme natural events. The proposed proceeding would allow for identification and a thorough assessment of critical vulnerabilities to the state's regulated utility systems, and risk mitigations to be proposed, evaluated, and prioritized. The targeted outcome of such an effort would be to support the development of plans that rely on risk assessments prioritizing mitigation measures that should be implemented to address critical vulnerabilities efficiently and cost-effectively.³

On November 21, 2023, the Commission issued Order No. 40396, opening a non-docketed proceeding, "Directing Public Utilities to Develop and File Reports Related to their Ongoing Efforts and Future Mitigation Plans to Address Natural Hazards." The Department offers that this non-docketed proceeding offers the opportunity to develop the actions needed to protect ratepayers on a state-wide basis, which could include the electric utilities' wildfire mitigation plans.

The Department expresses concerns regarding the proposed requirement for the Commission to determine the amount of reasonable costs to develop, implement, and administer the wildfire mitigation plan and the subsequent recovery of such costs from ratepayers. While the Department appreciates that there is a safeguard in place to refund costs if actual costs fall under the amount deemed reasonable by the Commission, the Department cautions that while the electric utility companies have the burden of proving the reasonableness of any costs exceeding 15%, the Department believes that the presumption of prudence should be removed because such costs could quickly compound overtime. The Department also expresses concerns regarding the assessment of such costs on a statewide basis, as this could potentially lead to an inequitable situation in which the customers of one electric utility company pay for the costs of a separate electric utility company to develop, implement, and administer a wildfire mitigation plan. The Department suggests that if there is a need to recover costs from ratepayers, these costs are kept to a minimum, assessed based on the plan specific

³ Docket No.2022-0135, Department's Response to Life of the Land's Motion for Leave to File Post Fire Information Requests to PUC & HECO, filed on September 18, 2023, at 3.

to the ratepayer's service area (or alternatively, the ratepayer's electric utility company), and applied based on consumption as opposed to a flat fee charged equally to all ratepayers.

Thank you for the opportunity to testify on this bill.

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

TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

February 20, 2024
9:35 a.m.

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

MEASURE: S.B. No. 2091 SD1

TITLE: RELATING TO PUBLIC UTILITIES.

DESCRIPTION: Requires all telecommunications service providers to communicate relevant information relating to the deenergization of electrical lines to public safety or emergency response offices for the affected areas. Requires all electric utilities to operate electrical lines and equipment in a manner that shall minimize the risk of catastrophic wildfire posed by the electrical lines and equipment. Requires each electric utility to prepare a wildfire mitigation plan and protocols for deenergizing electrical lines. (SD1)

POSITION:

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

COMMENTS:

The Commission appreciates the intent of this measure to ensure coordinated and effective response to the deenergization of electrical lines in emergency situations, and to require that electric utilities operate in accordance with a wildfire mitigation plan (“plan”). Given how critical utility services are to effective emergency response, the Commission agrees that it is imperative for telecommunications providers and electrical utilities to have clear protocols for working with key stakeholders and customers when there is a need to deenergize electrical lines. The Commission understands the

importance of reducing the likelihood and impact of wildfires across the State and is committed to supporting such efforts in its work.

The Commission notes that it has testified in support of Administration Bills, S.B. 3096 and companion measure H.B. 2407, which also request that the Commission require and approve plans from electric utilities. The Commission continues to support the approach provided in the SD1 and HD2 of those measures, which would allow for effective development of plans (including consideration of line deenergization protocols), and appropriate cost recovery mechanisms for utilities. The Commission agrees with the inclusion of definitions and additional plan contents as amendments reflected in the SD1 of this measure, and offers the following comments and recommended amendments to further clarify the intent of this measure.

1. Expansion of Plan Contents

The Commission recommends further expanding the plan contents to include other key elements as outlined in S.B. 3096 SD1 and H.B. 2407 HD2, such as (1) responsible persons; (2) plan objectives; (3) areas subject to heightened wildfire risk both within and outside the electric utility right of way; (4) metrics to evaluate performance; (5) past metrics used to inform the plan; (6) risks and risk drivers associated with electric utility equipment as well as topographic and climatological risks; (7) how the plan accounts for those risks; (8) actions to ensure an electric utility's system is prepared for a wildfire including hardening and modernizing its infrastructure; (9) workforce capacity to promptly restore service; (10) consistency of the plan with other hazard mitigation and grid hardening plans; (11) procedures for monitoring and auditing plan effectiveness and correcting any identified deficiencies; and (12) data governance. (See S.B. 3096 SD1 page 9, line 12 through page 14, line 20).

2. Evaluation and approval of plans or plan updates

The Commission prefers the language used in S.B. 3096 SD1 and H.B. 2407 HD2 for §269-C(d) that:

- Allows the Commission to gather input from the Department of Land and Natural Resources, Hawaii Emergency Management Agency, and local emergency services agencies for evaluation of the plan or plan update (see S.B. 3096 SD1 page 15, lines 11 – 14); and

3. Defense to Enforcement Action and Adoption of Rules and Orders

The Commission prefers the language used in S.B. 3096 SD1 and H.B. 2407 HD2 for §269-C(g) and (h) that:

- States that the Commission's approval of a risk-based wildfire protection plan does not by itself establish a defense to any enforcement action for violation of a commission rule or order, or relieve an electric utility from proactively managing wildfire risk (see S.B. 3096 SD1 page 17, lines 10 – 13); and
- Clarifies that the Commission shall, as appropriate, issue orders *and* adopt rules, which may include procedures and standards for data governance, risk-based decision-making, vegetation management, public power safety shutoffs and restorations, pole materials, circuitry, and monitoring systems (see S.B. 3096 SD1 page 17, lines 14 – 20).

4. Penalties

The Commission recommends incorporating a section on penalties, as laid out in H.B. 2407, HD2 for §269-D (see H.B. 2407 HD2 page 22, lines 1 – 8).

5. Commission Review Time

This measure requires the Commission to approve or update the plan within 180 days after the initial plan or plan update has been filed. The Commission stands by its prior testimony on related bills that would require a decision on the plan or plan update within 90 days after the last party filing in the docketed proceeding. This would allow the Commission to thoroughly review public and stakeholder comments on the plan or plan update and incorporate them into any decision issued on the plan or plan update accordingly in a timely manner. At page 5, lines 13-14, the Commission recommends the following amendment:

(e) Not more than ~~one hundred eighty days after an electric utility files a plan or plan update~~ ninety days after the last party filing in the wildfire protection plan or update docketed proceeding, the commission shall approve, approve with conditions on the plan, or update the plan if the commission finds that the plan or update is based on reasonable and prudent practices and designed to meet all applicable rules and standards adopted by the commission.

6. Securitization

In contrast to S.B. 3096 SD1, H.B. 2407 HD2, and S.B. 2922 SD1, this measure does not include language related to securitization. Securitization would allow an electric utility to acquire low interest financing in lieu of regular debt financing, which could help them pay for wildfire mitigation projects even if an electric utility's credit rating has been downgraded to junk status. The Commission notes that inclusion of securitization

S.B. No. 2091 SD1
Page 4

language from S.B. 3096 SD1 or H.B. 2407 HD2 would be beneficial (see S.B. 3096 SD1 page 20, line 5 through page 54, line 13).

Thank you for the opportunity to testify on this measure.

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

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
COMMERCE AND CONSUMER PROTECTION

Tuesday, February 20, 2024
9:35 AM

State Capitol, Conference Room 229 and Via Videoconference

In consideration of
SENATE BILL 2091 SENATE DRAFT 1
RELATING TO THE PUBLIC UTILITIES

Senate Bill 2091 Senate Draft 1 proposes to require all telecommunications service providers to communicate relevant information relating to the de-energization of electrical lines to public safety or emergency response offices for the affected areas, requires electrical utilities to maintain their equipment to reduce wildfire risk, and requires electrical utilities to create a wildfire mitigation plan. **The Department of Land and Natural Resources (Department) supports this measure with comments.**

The Department supports requiring telecommunications service providers to notify the public when electrical utilities determine that de-energization of powerlines is necessary due to the threat of wildfire. The Department supports requiring electric utility companies to operate lines and equipment in a manner that minimizes the risk of wildfire, particularly the maintenance of vegetation below and surrounding transmission lines. Where feasible, the Department recommends the installation of transmission lines underground. For transmission lines less than 200 kV, the department recommends maintaining vegetation 30 feet out from lines and equipment. For lines greater than 200 kV, the Department recommends maintaining vegetation 40 feet out from the lines and equipment. For all vegetation maintenance, the Department also recommends electrical utilities follow all state and federal guidelines regarding threatened and endangered species that may occur within their utility easement. The Department also supports requiring electrical utilities to prepare a wildfire mitigation plan and protocols for de-energizing electrical lines. The Department recommends that the Division of Forestry and Wildlife and the county fire departments be consulted during the creation of these plans.

Mahalo for the opportunity to comment on this measure.



**Hawaiian
Electric**

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

SB 2091 SD1

Relating to Public Utilities

Tuesday, February 20, 2024

9:35 AM

State Capitol, Conference Room 229

Jimmy D. Alberts
Senior Vice President & Chief Operations Officer
Hawaiian Electric

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

My name is Jimmy D. Alberts and I am testifying on behalf of Hawaiian Electric providing comments in support and requesting amendments to SB 2091 SD1, Relating to Public Utilities.

Hawaiian Electric understands the importance of having a robust wildfire mitigation strategy while providing safe, reliable power at a reasonable cost for our customers and communities. Six months after the tragic Maui wildfires, Hawaiian Electric continues to press ahead with recovery efforts and identifying utility best practices and new technologies to prevent such a tragedy from ever happening again in our service territory.

The Maui wildfires have prompted us to revisit the assumptions and determinations of risk shaping our wildfire mitigation efforts. Hawaiian Electric intends to work closely with the community to address key issues such as whether a preemptive power shutoff program is appropriate for Hawaii. We also have accelerated and intensified the implementation of our own wildfire mitigation plan and have taken other

immediate action steps, including implementing fast trip settings on circuits, re-inspecting all lines for vulnerabilities, and initiating the process for replacing poles, conductor and fuses in high-risk areas.

While we agree with the intent of this bill to set forth regulatory requirements regarding a wildfire mitigation plan, Hawaiian Electric believes a holistic, forward-looking approach should afford greater insulation and financial certainty for utility customers. Specifically, we propose the below amendments to protect the jurisdiction of the Public Utilities Commission (“PUC” or “Commission”) by adding limitations on the ability of private plaintiffs to sue electric utilities or the PUC based on alleged inadequacies in plans approved by the PUC. As part of approving a plan, the PUC must decide *both* what measures are necessary for safety *and* what measures would be too costly to be reasonable. For example, the PUC might decide that a power shutoff in high wind conditions is needed to protect public safety. If a plaintiff could sue the utility for damages resulting from the power outage, the Commission’s decision would be undermined. Or the PUC might decide that undergrounding lines in a particular area would be too costly compared to the risk reduction. If a fire ensues in that area, and a plaintiff could sue the utility on the theory that it should have undergrounded the lines, the plaintiff would be asking the jury or court to second-guess the PUC’s decision. Significantly, on the other hand, these provisions do not provide blanket immunity to electric utilities; rather, they bar specific arguments only to the extent they ask judges and juries to contradict the PUC’s express judgments. For example, if a PUC-approved plan requires a utility to inspect certain poles every year, and the utility fails to do so, a plaintiff would not be barred from alleging the utility was negligent in failing to act in accordance with the plan.

Accordingly, we respectfully request your consideration of the below amendments to add the underscored language as it would achieve these goals and ensure that the PUC's decision, with all facts before it, will carry appropriate weight:

(i) No electric utility shall be civilly liable for the death of or injury to persons, or property damage, as a result of or in connection with any the followings acts or omissions:

- (1) Any act taken in accordance with a plan or updated plan approved by the Commission under this Section; or**
- (2) Any failure to take an action proposed by an electric utility in a plan or updated plan and thereafter removed from the plan by modification of the Commission.**

(j) In any action seeking to hold an electric utility civilly liable for the death of or injury to persons, or property damage, no inference of liability may be drawn solely based on a failure by the electric utility to adhere to the requirements of an approved plan.

In addition, for clarity purposes Hawaiian Electric suggests that the word “and” between subsections (g)(1) and (g)(2) be replaced with “or” given the subsections are in the alternative.

(g) In its decision pursuant to subsection (e), the commission shall determine the reasonable costs to develop, implement, and administer the plan and shall authorize the electric utility to recover the costs in rates. . . . If the actual costs are:

- (1) Less than the amounts the commission determined were reasonable in its decision under subsection (e), the commission shall direct the electric utility to refund or credit such costs to ratepayers; [~~and~~] or**
- (2) Equal to or greater than the amounts the commission determined were reasonable in its decision under subsection (e), then the commission shall not direct the electric utility to refund to ratepayers the amount the commission previously determined was reasonable, but may disallow the recovery from ratepayers of any additional costs the commission finds were unreasonable. In connection with any review:**

As the risk of catastrophic wildfires in Hawaii increases, it is important for utilities to develop and implement plans that will mitigate wildfire risks with regulatory oversight and cost recovery. This bill seeks to effectuate these goals through a rigorous, detailed,

and reliable process. With the amendments noted above, this bill will appropriately recognize that the Commission has proper oversight—through a public process—to decide what details should and shouldn't be included in a wildfire mitigation plan, and allows the utility to rely on such decision.

Accordingly, Hawaiian Electric appreciates the Committee's consideration of its proposed amendment to SB 2091, SD1. Thank you for this opportunity to support SB 2091, SD1.



DISABILITY AND COMMUNICATION ACCESS BOARD

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February 20, 2024

TESTIMONY TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senate Bill 2091 SD1 – Relating to Public Utilities

The Disability and Communication Access Board (DCAB) offers comments on Senate Bill 2091 SD1 – Relating to Public Utilities.

This bill requires all telecommunications service providers to communicate relevant information relating to the deenergization of electrical lines to public safety or emergency response offices for the affected areas. Requires all electric utilities to operate electrical lines and equipment in a manner that shall minimize the risk of catastrophic wildfire posed by the electrical lines and equipment. Requires each electric utility to prepare a wildfire mitigation plan and protocols for deenergizing electrical lines.

In addition, people who use and are dependent on personal medical equipment are at great risk when electrical power is lost. Therefore, it is imperative that public utilities and first responder agencies communicate possible or actual deenergization events to persons who may be impacted so they can seek secure alternate power sources or evacuate to areas that are not at risk for deenergization.

Thank you for considering our comments.

Respectfully submitted,

KIRBY L. SHAW
Executive Director