



1

**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I**  
**OFFICE OF THE DIRECTOR**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**  
**KA 'OIHANA PILI KĀLEPA**

335 MERCHANT STREET, ROOM 310  
P.O. BOX 541  
HONOLULU, HAWAII 96809  
Phone Number: (808) 586-2850  
Fax Number: (808) 586-2856  
cca.hawaii.gov

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

**SYLVIA LUKE**  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

**NADINE Y. ANDO**  
DIRECTOR | KA LUNA HO'OKELE

**DEAN I HAZAMA**  
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the**  
**House Committee on Consumer Protection & Commerce**  
**Thursday, March 16, 2023**  
**2:30 p.m.**  
**Conference Room 329**

**On the following measure:**  
**S.B. 477, S. D. 1, RELATING TO THE PUBLIC UTILITIES COMMISSION**

Chair Nakashima 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: (1) the Public Utilities Commission (Commission) to make every effort 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: (2) the Commission to, if a decision is rendered after the relevant nine- or twelve—month period, submit a report in writing, on paper or electronically, detailing the reasons therefore to the Legislature within thirty days after rendering the decision.

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 could take away needed 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. In addition, a restricted review period may deny the Department an opportunity to secure benefits for customers as part of the overall transaction.

Therefore, the Department appreciates the S.D. 1 version that has included the language of "make every effort to" so that the requirement reads, "shall make every effort to complete its review ..." to provide the needed flexibility to protect consumers' interests.

The Department further acknowledges that the proposed measure allows a distinction for an investor-owned electric utility transaction, which is relevant only to the Hawaiian Electric companies, where the Commission shall make every effort to resolve the matter within twelve months. In contrast, the Commission would need to strive towards filing its final decision and order for every other qualifying utility transaction within nine months. The Department appreciates how the current version no longer mandates that the respective reviews must be completed within 12 and nine months, respectively. Instead, the current version allows the Commission flexibility in encouraging the completion of the dockets within the identified time periods.

The Department offers that the flexibility is warranted since the last proposed transfer of control for the only investor-owned electric utility took more than eighteen months and, given the importance of the transaction to the State related to clean energy goals, involved the largest regulated utility in Hawaii, and there were nearly thirty parties to that docket, such flexibility is in the public and consumers' interest. 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 further notes that the combination of the prescribed time periods and flexibility for other qualifying transactions is acceptable. The Department highlights 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. 2021-0110, 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 offers that no prescribed time limit is necessary. If, however, the Legislature believes it is reasonable to introduce time limits, the Department respectfully offers that the current version allows for necessary flexibility to address such varied transactions.

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  
HOUSE COMMITTEE ON  
CONSUMER PROTECTION & COMMERCE

March 16, 2023  
2:30 p.m.

Chair Nakashima, Vice-Chair Sayama, and Members of the Committee:

**MEASURE:** S.B. No. 477, SD1

**TITLE:** RELATING TO THE PUBLIC UTILITIES COMMISSION.

**DESCRIPTION:** Requires the Public Utilities Commission to make every effort 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. Requires the Public Utilities Commission to, if a decision is rendered after the relevant nine- or twelve-month period, submit a report in writing, on paper or electronically, detailing the reasons therefore to the Legislature within thirty days after rendering the decision. Effective 7/1/2050. (SD1)

**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 appreciates the amendments made by the Senate Committee on Commerce and Consumer Protection, but continues to note concerns that that this measure may not be in the public interest and is unnecessary given current practices.

Decisions from the Commission on applications by public utilities seeking Commission authorization for a merger, consolidation, acquisition, or other change of control can be a significant undertaking that require 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 also notes that parties, intervenors, and participants in any dockets related to a merger, consolidation, acquisition, or other change of control must be afforded 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 review of each application presented to the Commission may differ based on the nature of the application presented and the specific procedural steps that may be required to complete the Commission's review. Some of these procedural steps may have specific time frames prescribed by statute or the Hawaii Administrative Rules, in which case the Commission may have very little flexibility to move through any such items any faster than what is prescribed. While there may be elements within the procedural schedule that the Commission could shorten to comply with any deadlines imposed by this legislation, the Commission notes that doing so may impair its ability to adequately review an application and may also raise potential due process concerns for the parties, intervenors, or participants involved in the docket.

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.

Should the Legislature still wish to pass this measure, the Commission requests that the Committee adopt language consistent with Hawaii Revised Statutes § 269-16 (d)(3), which requires a “completed application” in order to start the nine-month review period of a rate case. The use of the term “completed application” is also consistent with other similar laws that require a decision within a statutory time frame. The Commission also requests consideration by the Committee for language that would allow for exemption of time rules when agreed to by the Applicants and / or parties of the merger docket. The Commission notes that without any such exemption provision, any request by parties to these merger dockets to delay or otherwise seek extension on any filing will likely be denied in order to comply with any established timelines, or would otherwise be subject to very short deadlines. Also, should the timeline not permit for additional discovery, the Commission may be forced to issue a Decision based on an incomplete record, considering only the available record as it stands. Language that can be adapted for this measure relating to the completeness of applications as well as exemptions of time rules is as follows:

The nine-month or twelve-month period in this subsection shall begin only after a completed application has been filed with the commission and a paper or an electronic copy served on the consumer advocate. The commission shall establish standards concerning the data required to be set forth in the application in order for it to be deemed a completed application. The consumer advocate may, within twenty-one days after receipt, object to the sufficiency of any application, and the commission shall hear and determine any objection within twenty-one days after it is filed. If the commission finds that the objections are without merit, the application shall be deemed to have been completed upon original filing. If the commission finds the application to be incomplete, it shall require the applicant to submit an amended application consistent with its findings, and the nine-month period shall not commence until the amended application is filed.

The Applicants may waive the time limit in this subsection at any time during consideration of the application. Upon mutual agreement by parties of docket, the time limit may be extended

S.B. No. 477, SD1  
Page 4

to accommodate delays in filings or an extended procedural schedule.

Thank you for the opportunity to testify on this measure.

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

**HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE**  
March 16, 2023 – 2:30 PM  
Conference Room 329, Hawai'i State Capitol

**SUPPORT FOR:**

**S.B. 477 SD1 – RELATING TO THE PUBLIC UTILITIES COMMISSION**

To: Representative Mark M. Nakashima, Chair  
Representative Jackson D. Sayama, Vice Chair  
Members of the Committee on Consumer Protection & Commerce

Re: Testimony providing support for SB 477 SD1

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

Thank you for this opportunity to provide testimony on SB 477 SD 1, which requires the Hawai'i Public Utilities Commission to (1) make every effort 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, (2) if a decision is not rendered within nine months, submit a report to the legislature detailing the reasons for failing to meet the prescribed period within thirty days after rendering the decision.

Hawaiian Telcom supports the intent of this measure. However, in the case of mergers or change of control applications involving telecommunications companies should be required to be processed within nine months. Having greater certainty on the maximum length of time it will take to process change of control or merger applications involving telecommunications companies will be extremely valuable so that we do not lose customers or employees.

In 2009, the Hawai'i State Legislature recognized the increasing competition 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 products and services and workforce talent. There are currently more than 200 companies authorized by the Hawai'i Public Utilities Commission to provide telecommunications services in Hawai'i.



Hawaiian Telcom stands ready to work with your Committee, the Hawai'i Public Utilities Commission, the Office of Consumer Advocacy, other regulated companies, and stakeholders to ensure that merger and change of control applications in highly competitive industries such as telecommunications are processed within nine months.

Thank you for the opportunity to provide testimony on SB 477 SD 1.



**HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE**

March 16, 2023, 2:30 PM

Room 329

**TESTIMONY IN OPPOSITION OF SB 477 SD1**

Aloha Chair Nakashima, Vice Chair Sayama, and Committee members:

Blue Planet Foundation **respectfully OPPOSES SB 477 SD1**. While we appreciate the amendments made in the SD1, we have concerns over the intention and necessity of this bill to expedite PUC decision-making on a merger, consolidation, acquisition, or change of control of a utility within a specific time frame, as it may reduce flexibility, restrict due process, and work counter to the public interest.

Blue Planet Foundation is a Hawai'i-based nonprofit organization. We are committed to helping Hawai'i achieve its climate goals and accelerate progress towards a more just and sustainable clean energy future. Through our advocacy for clean energy, sustainable transportation, and energy efficiency, we seek to make our communities stronger, our energy more secure, our environment healthier, and our economy more robust.

Blue Planet has had firsthand experience in utility merger dockets before the PUC, and in 2015, our organization was an intervenor in the Docket 2015-0022 relating to the merger between Hawaiian Electric and NextEra.<sup>1</sup> There were twenty-nine parties and positions to consider in this docket, and due to the complexity of the merger, the PUC took roughly 18 months to render a decision on this important matter. We maintain that the PUC needed such flexibility and time to complete its due diligence and allow due process for intervening parties and other stakeholders.

We have concerns that if SB 477 were enacted it would set a bad precedent by hindering the PUC's ability to make well-informed decisions that act in the public interest of safety, health, reliability, and affordability of utility services. We also believe that the PUC already makes efforts to complete its review in a timely manner, often within the nine-month and twelve-month periods proposed in the bill, thereby making this bill unnecessary, even with the amendments made in the SD1.

For these reasons, we ask you **HOLD SB 477**.

---

<sup>1</sup> [https://puc.hawaii.gov/wp-content/uploads/2016/07/FINAL.ORDER\\_.33795.Docket2015-0022.pdf](https://puc.hawaii.gov/wp-content/uploads/2016/07/FINAL.ORDER_.33795.Docket2015-0022.pdf)