
A BILL FOR AN ACT

RELATING TO ELECTRIC UTILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the State's ongoing
2 energy transition from fossil fuels to renewable energy has been
3 driven and supported by certain key energy laws and regulatory
4 policies that were established after years, if not decades, of
5 continued advocacy efforts. These laws and regulatory policies
6 include, among others, the renewable portfolio standards laws
7 established under part V of chapter 269, Hawaii Revised
8 Statutes; the performance-based regulation framework created by
9 the public utilities commission for electric utilities; and the
10 encouragement and oversight of renewable power purchase
11 agreements by the public utilities commission, which are
12 contractual agreements entered into by electric utilities and
13 independent power producers for, among other things, the
14 development and production of new utility-scale renewable energy
15 projects.

16 Notwithstanding, the legislature finds that a bankruptcy or
17 reorganization proceeding involving an electric utility company



1 in the State could result in the acquisition, merger, or
2 consolidation of that electric utility company with an acquiring
3 entity that could ultimately lead to a change in management and
4 control. In a worst-case scenario, the acquiring entity may
5 seek to weaken, alter, or reverse those key state energy laws,
6 policies, frameworks, and agreements that have greatly
7 contributed to the State's progress towards meeting its
8 renewable energy goals.

9 Accordingly, the purpose of this Act is to:

- 10 (1) Require the public utilities commission to consider or
11 impose certain conditions of approval on any order
12 approving, in whole or in part, an application for the
13 proposed acquisition, merger, or consolidation of an
14 electric utility company by an acquiring entity; and
15 (2) Establish a process to ensure that when an application
16 for the proposed acquisition, merger, or consolidation
17 of an electric utility company is filed with the
18 public utilities commission by an acquiring entity
19 that is an investor-owned utility, alternative
20 applications from entities that operate under a non-



1 investor-owned utilities ownership model may be
2 concurrently submitted and reviewed.

3 SECTION 2. Chapter 269, Hawaii Revised Statutes, is
4 amended by adding two new sections to be appropriately
5 designated and to read as follows:

6 "§269-A Acquisition, merger, or consolidation of electric
7 utility companies; conditions of approval. (a) Notwithstanding
8 the provisions of sections 269-7.5, 269-18, and 269-19, in any
9 public utilities commission order approving, in whole or in
10 part, an application for the proposed acquisition, merger, or
11 consolidation of an electric utility company by an acquiring
12 entity, the public utilities commission shall consider or impose
13 the following conditions of approval established in this
14 section, including any other conditions it deems necessary.

15 (b) Through at least the year 2040, the acquiring entity
16 shall not propose or support any change or amendment that may
17 have a material adverse effect on the renewable portfolio
18 standards laws established under part V of chapter 269,
19 including any change or amendment that:

20 (1) Is contrary to the purpose of the renewable portfolio
21 standards laws;



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1 (2) Reduces the renewable portfolio standards benchmark
2 percentage requirements established for net
3 electricity sales and generation pursuant to section
4 269-92;

5 (3) Extends the deadline by which the electric utility
6 company shall comply with the State's renewable
7 portfolio standards; or

8 (4) Seeks to reduce, curb, or limit the authority of the
9 public utilities commission to penalize an electric
10 utility company that fails to meet the renewable
11 portfolio standards, pursuant to section 269-92 or
12 other commission order.

13 (c) The acquiring entity shall not propose or support,
14 directly or indirectly, the termination of any existing
15 performance-based regulation framework established for the
16 electric utility company by the public utilities commission, or
17 any change or amendment that may have a material adverse effect
18 to the existing performance-based regulation framework,
19 including any change or amendment that:



- 1 (1) Reduces the length of any existing or planned future
2 multi-year rate plan to a period of less than five
3 years;
- 4 (2) Uses a traditional cost-of-service rate case, unless
5 the public utilities commission has previously entered
6 an order directing the use of a traditional cost-of-
7 service rate case;
- 8 (3) Modifies the existing annual revenue adjustment
9 formula established for the electric utility company
10 by the public utilities commission; or
- 11 (4) Modifies existing accelerated performance incentive
12 mechanisms in a manner that is contrary to the purpose
13 of the mechanism or reduces the net amount of
14 renewable energy procured by the electric utility
15 company;
- 16 provided that nothing in this subsection shall limit any re-
17 opener mechanism established for the electric utility company by
18 the public utilities commission.
- 19 (d) The acquiring entity shall not terminate any existing
20 and valid power purchase agreement between the electric utility
21 company and an independent power producer of energy services



1 based solely on the completion of the acquisition, merger, or
2 consolidation; provided that nothing in this subsection shall
3 prevent the termination of a contractual agreement as permitted
4 by its terms, subject to approval from the public utilities
5 commission. The acquiring entity shall not attempt to
6 renegotiate any material provisions of any existing and valid
7 power purchase agreement including but not limited to the
8 established payment rates for energy or energy storage or other
9 commercial terms; provided that nothing in this subsection shall
10 prevent the amending of a contractual agreement as may be
11 permitted under its terms, subject to approval by the public
12 utilities commission. Before the completion of the acquisition,
13 merger, or consolidation of the electric utility company, the
14 acquiring entity shall not unduly influence the terms of any
15 power purchase agreement that is under negotiation between the
16 electric utility company and an independent power producer of
17 energy services.

18 (e) As used in this section:

19 "Acquiring entity" means the entity that acquires all or
20 some classes of an electric utility company's interests in an
21 interest exchange, including but not limited to interest in any



1 road, line, plant, system, or other real or personal property
2 necessary for the performance of the electric utility's duties
3 to the public or any franchise or permit, or right thereunder.

4 "Electric utility company" means a public utility as
5 defined in section 269-1, for the production of, conveyance,
6 transmission, delivery, or furnishing of power.

7 **§269-B Acquisition, merger, and consolidation of electric**
8 **utility companies; investor-owned acquiring entities;**
9 **consideration of alternative applications.** (a) The public
10 utilities commission shall, upon receiving an application for
11 the acquisition, merger, or consolidation of an electric utility
12 company, commence a regulatory proceeding to review the
13 application. Notwithstanding the provisions of sections 269-
14 7.5, 269-18, and 269-19, upon commencement of the regulatory
15 proceeding to review the application, if the application
16 proposes the acquisition, merger, or consolidation of an
17 electric utility company by an acquiring entity that is an
18 investor-owned utility, the public utilities commission shall,
19 for a period of one hundred eighty days, suspend its review of
20 the application and immediately establish a process, subject to
21 the requirements of this section, for the consideration of



1 alternative applications from acquiring entities that operate
2 under a non-investor-owned utilities ownership model.

3 (b) If bona fide applications are submitted to the public
4 utilities commission by acquiring entities that operate under a
5 non-investor-owned utilities ownership model for the
6 acquisition, merger, or consolidation of the electric utility
7 company within the one hundred eighty day period, the public
8 utilities commission shall review the applications concurrently.
9 The electric utility company shall have no obligation to
10 affirmatively state its position in support of or in opposition
11 to any pending application.

12 (c) Notwithstanding any law or rule to the contrary, the
13 public utilities commission shall have the power to consolidate
14 its review of all submitted applications pursuant to this
15 section.

16 (d) This section shall not apply to the acquisition of a
17 not-for-profit enterprise that is not owned by shareholders.

18 (e) For the purposes of this section:

19 "Acquiring entity" has the same meaning as defined in
20 section 269-A.



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1 "Electric utility company" means a "public utility" as
2 defined in section 269-1, for the production of, conveyance,
3 transmission, delivery, or furnishing of power.

4 "Non-investor-owned utilities ownership model" means a
5 member-owned cooperative utility or any not-for-profit
6 enterprise that is not owned by shareholders."

7 SECTION 3. In codifying the new sections added by
8 section 2 of this Act, the revisor of statutes shall substitute
9 appropriate section numbers for the letters used in designating
10 the new sections in this Act.

11 SECTION 4. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: *Nicole E. Lunn*
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Report Title:

Public Utilities Commission; Electric Utility Companies; Acquisitions; Mergers; Consolidations; Conditions of Approval; Application Review Process; Alternative Applications; Non-Investor-Owned Utilities

Description:

Requires the PUC to impose certain conditions of approval on any order approving, in whole or in part, an application for the proposed acquisition, merger, or consolidation of an electric utility company by an acquiring entity. Establishes a process to ensure that when an application for the proposed acquisition, merger, or consolidation of an electric utility company is filed with the PUC by an acquiring entity that is an investor-owned utility, alternative applications submitted by entities that operate under a non-investor-owned utilities ownership model are concurrently reviewed.

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