
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 utility
13 companies and independent power producers for, among other
14 things, the development and production of new utility-scale
15 renewable energy 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 by 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, or reduce the electric utility's
9 capacity to maintain a qualified and knowledgeable workforce
10 with the ability to support and pursue the State's renewable
11 energy goals, as well as to ensure safe, efficient, reliable,
12 and contiguous electric utility service to local consumers and
13 the community.

14 Accordingly, the purpose of this Act is to:

- 15 (1) Require the public utilities commission to consider or
16 impose certain conditions of approval on any order
17 approving, in whole or in part, an application for the
18 proposed acquisition, merger, or consolidation of an
19 electric utility company by an acquiring entity; and
20 (2) Establish a process to ensure that when an application
21 for the proposed acquisition, merger, or consolidation



1 of an electric utility company is filed with the
2 public utilities commission by an acquiring entity
3 that is an investor-owned utility, alternative
4 applications from entities that operate under a non-
5 investor-owned utilities ownership model may be
6 concurrently submitted and reviewed.

7 SECTION 2. Chapter 269, Hawaii Revised Statutes, is
8 amended by adding two new sections to part I to be appropriately
9 designated and to read as follows:

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

19 (b) Through at least the year 2040, the acquiring entity
20 shall not propose or support any change or amendment that may
21 have a material adverse effect on the renewable portfolio



- 1 standards laws established under part V of this chapter,
2 including any change or amendment that:
- 3 (1) Is contrary to the purpose of the renewable portfolio
4 standards laws;
- 5 (2) Reduces the renewable portfolio standards benchmark
6 percentage requirements established for net
7 electricity sales and generation pursuant to section
8 269-92;
- 9 (3) Extends the deadline by which the electric utility
10 company shall comply with the State's renewable
11 portfolio standards; or
- 12 (4) Reduces, curbs, or limits the authority of the public
13 utilities commission to penalize an electric utility
14 company that fails to meet the renewable portfolio
15 standards, pursuant to section 269-92 or other
16 commission order.
- 17 (c) The acquiring entity shall not propose or support,
18 directly or indirectly, the termination of any existing
19 performance-based regulation framework established for the
20 electric utility company by the public utilities commission, or
21 any change or amendment that may have a material adverse effect



1 to the existing performance-based regulation framework,
2 including any change or amendment that:
3 (1) Reduces the length of any existing or planned future
4 multi-year rate plan to a period of less than five
5 years;
6 (2) Uses a traditional cost-of-service rate case, unless
7 the public utilities commission has previously entered
8 an order directing the use of a traditional cost-of-
9 service rate case;
10 (3) Modifies the existing annual revenue adjustment
11 formula established for the electric utility company
12 by the public utilities commission; or
13 (4) Modifies existing accelerated performance incentive
14 mechanisms in a manner that is contrary to the purpose
15 of the mechanism or reduces the net amount of
16 renewable energy procured by the electric utility
17 company;
18 provided that nothing in this subsection shall limit any re-
19 opener mechanism established for the electric utility company by
20 the public utilities commission.



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



1 (e) The acquiring entity shall assume and be bound by the
2 terms and conditions of any existing collective bargaining
3 agreement at the time of the acquisition, merger, or
4 consolidation, as it applies to covered employees.

5 (f) For the purposes of this section:

6 "Acquiring entity" means the entity that acquires all or
7 some classes of an electric utility company's interests in an
8 interest exchange, including but not limited to interest in any
9 road, line, plant, system, or other real or personal property
10 necessary for the performance of the electric utility's duties
11 to the public or any franchise or permit, or right thereunder.

12 "Covered employee" means an individual who is employed by
13 and is a party to a collective bargaining agreement with an
14 electric utility company immediately prior to an acquisition,
15 merger, or consolidation of the electric utility company by an
16 acquiring entity, as approved by the public utilities
17 commission.

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



1 §269-B Acquisition, merger, or consolidation of electric
2 utility companies; investor-owned acquiring entities;
3 consideration of alternative applications. (a) The public
4 utilities commission shall, upon receiving an application for
5 the acquisition, merger, or consolidation of an electric utility
6 company, commence a regulatory proceeding to review the
7 application. Notwithstanding the provisions of sections
8 269-7.5, 269-18, and 269-19, upon commencement of the regulatory
9 proceeding to review the application, if the application
10 proposes the acquisition, merger, or consolidation of an
11 electric utility company by an acquiring entity that is an
12 investor-owned utility, the public utilities commission shall,
13 for a period of one hundred eighty days, suspend its review of
14 the application and immediately establish a process, subject to
15 the requirements of this section, for the consideration of
16 alternative applications from acquiring entities that operate
17 under a non-investor-owned utilities ownership model.

18 (b) If bona fide applications are submitted to the public
19 utilities commission by acquiring entities that operate under a
20 non-investor-owned utilities ownership model for the
21 acquisition, merger, or consolidation of the electric utility



1 company within the one hundred eighty day period, the public
2 utilities commission shall review the applications concurrently.
3 The electric utility company shall have no obligation to
4 affirmatively state its position in support of or in opposition
5 to any pending application.

6 (c) Notwithstanding any law or rule to the contrary, the
7 public utilities commission shall have the power to consolidate
8 its review of all submitted applications pursuant to this
9 section.

10 (d) This section shall not apply to the acquisition,
11 merger, or consolidation of a not-for-profit enterprise that is
12 not owned by shareholders.

13 (e) For the purposes of this section:

14 "Acquiring entity" has the same meaning as defined in
15 section 269-A.

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

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



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

5 SECTION 4. New statutory material is underscored.

6 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

PUC; Electric Utility Companies; Acquisitions; Mergers; Consolidations; Conditions of Approval; Application Review Process; Alternative Applications; Non-Investor-Owned Utilities Ownership Models; Bargaining Agreements

Description:

Requires the Public Utilities Commission 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 filed by acquiring entities that operate under a non-investor-owned utilities ownership model will be concurrently reviewed. Requires an acquiring entity of an electric utility company to assume and be bound by any existing collective bargaining agreements entered into by the electric utility company, as it applies to covered employees. Effective 7/1/2050. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

