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Testimony of the Public Utilities Commission

To the
Senate Committees on
Commerce & Consumer Protection
and
Energy & Intergovernmental Affairs

February 4, 2026
9:30 a.m.

Chairs Keohokalole and Wakai, Vice Chairs Fukunaga and Chang, and Members of the Committees:

Measure: S.B. No. 2487
Title: RELATING TO THE PUBLIC UTILITIES COMMISSION.

Position:

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

Comments:

The Commission supports the intent of this measure to clarify that electric utility regulation in Hawaiʻi should emphasize performance-based incentives, cost control, and ratepayer protections.

The Commission remains cognizant of its legislative mandate to break the link between an electric utility's revenues and its investment levels. The Commission must also operate within the constitutional constraints articulated by the United States Supreme Court in *Hope Natural Gas* and *Bluefield Water Works*. These decisions require that utility rates be just and reasonable and provide an opportunity for the utility to earn a fair return on its investment, while also protecting customers from excessive charges. The Commission is mindful that performance-based and alternative ratemaking mechanisms are designed to change how revenues are determined and adjusted rather than seeking to eliminate the public utility's entitlement to a reasonable opportunity to recover prudently incurred costs and earn a fair return. Accordingly, the Commission must balance policy goals such as cost control, efficiency, reliability, resiliency, and customer value with the fundamental requirement that rates, viewed as a whole, remain sufficient to maintain the utility's financial integrity and ability to attract capital, consistent with *Hope* and *Bluefield.*

To this end, the Commission is currently undertaking its comprehensive review of the Performance-Based Regulation Framework ("PBR Framework") governing the Hawaiian Electric Companies in anticipation of the start of the Second Multi-Year Rate Period ("MRP2). This comprehensive review is to occur over three different phases (Phases 5-7) and will involve the concurrent re-basing of the Hawaiian Electric Companies' Target Revenues ahead of MRP2.

- Phase 5 utilized an informal collaborative process to identify which mechanisms within the PBR Framework may remain unmodified as the PBR Framework moves into MRP2, and which mechanisms should be examined for potential modification and/or elimination before commencing MRP2.
- Phase 6 would utilize a more formal proceeding to facilitate the examination of specific PBR mechanisms to determine what modifications, if any, should be adopted heading into MPR2.
- Phase 7 is reserved as a buffer period to address any issues with implementing any modifications to any mechanisms ahead of MRP2.

On February 27, 2025, the Commission issued Order No. 41575 in which the Commission determined that it would re-base the Hawaiian Electric Companies' Target Revenues ahead of MRP2. The Commission concluded that general rate case-like proceeding would best achieve the following outcomes: (1) base rates designed for extended stay-out periods with no rate cases; (2) the assessment and capture of any operational efficiencies that have occurred during the First Multi-Year Rate Period; and (3) the resolution of legacy issues that are currently not addressed under the PBR Framework. The Commission also noted that a general rate case-like proceeding would best satisfy the many procedural and legal requirements that continue to govern the Commission, including those provided for in section 269-16, Hawaii Revised Statutes ("HRS"), and Chapter 16-601, Subchapter 8, Hawaii Administrative Rules ("HAR").

On August 13, 2025, the Commission concluded Phase 5 with Order No. 41876. The Commission determined that it would focus Phase 6 on examining modifications to the I-Factor, Customer Dividend ("CD"), Earning Sharing Mechanism, X-Factor, the Exceptional Project Recovery Mechanism ("EPRM") Guidelines, and the Performance Incentive Mechanism ("PIM") Portfolio.

On September 29, 2025, the Commission issued Order No. 41963 in which the Commission granted Hawaiian Electric's request to extend the time for Hawaiian Electric to file its application to re-base its Target Revenues. The Commission set a deadline of January 7, 2026, by which Hawaiian Electric and the other parties would attempt to develop an alternative rate-rebasing proposal that "could make the need for a general rate case application and process (and the associated time, cost and resources) unnecessary." This deadline was subsequently extended to February 8, 2026.

On January 28, 2026, Hawaiian Electric made a request for a further ninety (90) day extension to finalize an alternative rate-rebasing proposal.

Given that Hawaiian Electric and the other parties in the PBR docket are presently engaged in discussions to develop an alternative to a general rate case process, the Commission will place an emphasis on concerns raised by this legislature regarding a return to cost-of-service regulation.

The Commission is committed to a process incorporating “incentives and penalty mechanisms that directly tie an electric [utility’s] revenues to that utility’s achievement on performance metrics” in order to “break the direct link between allowed revenues and investment levels.”

It is important to note that HAR § 16-601-87 and HAR § 16-601-88 require that all general rate increase applications by a public utility must utilize a forward-looking test year. When reviewing the reasonability of an application’s forward-looking test year figures, the Commission does rely on historical cost data and trends to validate and judge the reasonability of the application’s figures, but historical cost data and trends may not necessarily be dispositive in a vacuum.

The Commission believes that SB 2487’s requirement that the Commission apply a presumption in favor of considering historical cost trends and external cost-control indices when resetting utility revenues can be reconciled with the existing forward-looking test year requirements so long as it is a rebuttable presumption. Nevertheless, it may constrain the Commission’s ability to effectively set starting base rates for MRP2. Under the PBR Framework, base rates are set at the beginning of the five-year Multi-Year Rate Period and are designed such that the electric utility has a reasonable opportunity to earn its investments over the course of the entire five-year period. This includes all of the effects of the other PBR mechanisms, such as the CD, EPRM, and PIMs. Creating a presumption in favor of considering historical cost trends and external cost-control indices when resetting utility revenues may unintentionally create the need to alter the look and design of the other PBR mechanisms in Phase 6 to ensure that the PBR Framework as a whole satisfies *Hope* and *Bluefield.*

As the Commission continues its comprehensive review of the PBR Framework, the Commission remains committed to ensuring that the PBR Framework entering MRP2 retains and includes mechanisms that provide performance-based incentives, cost control, and ratepayer protections.

Thank you for the opportunity to testify on this measure.

JOSH GREEN, M.D.
GOVERNOR | KE KIAʻĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIAʻĀINA

STATE OF HAWAII | KA MOKUʻĀINA ʻO HAWAIʻI
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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce and Consumer Protection
and
Senate Committee on Energy and Intergovernmental Affairs
Wednesday, February 4, 2026
9:30 a.m.
Via Videoconference

On the following measure:
S.B. 2487, RELATING TO THE PUBLIC UTILITIES COMMISSION

Chair Keohokalole, Chair Wakai, and Members of the Committees:

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) clarify that, for electric utilities, "performance-based incentives" include revenue adjustment mechanisms, cost control mechanisms, rewards for superior performance, and penalties for subpar performance; (2) confirm that the Public Utilities Commission (Commission) may adopt alternative ratemaking procedures to establish electric utility rates and performance-based incentives; and (3) require the Commission to apply a presumption in favor of considering historical cost trends and external indices that reflect incentives to control costs if the Commission resets an electric utility's allowed revenues based on consideration of the utility's costs.

The Department understands the intent of this bill given that the purpose of the original Ratepayer Protection Act[1] was to directly tie an electric utility's revenues to its achievement on performance metrics and thereby break the direct link between allowed revenues and investment levels. However, the Department has significant concerns with the proposed amendments to Hawaii Revised Statues (HRS) § 269-16.1(a) found in Section 3 of the bill, particularly how proposed amendments to the last sentence currently in HRS § 269-16.1(a) may create detrimental uncertainty about whether the public interest standards and important due process safeguards in HRS § 269-16, and sections of Hawaii Administrative Rules (HAR) Chapter 16-601 related to rate increases, would still apply to electric utility requests to raise electric rates. The bill's proposed amendments would be as follows:

> "The [~~performance~~] performance-based incentives [~~and penalty mechanisms~~], as may be amended by the public utilities commission from time to time, shall apply to the regulation of electric utility rates under [~~section 269-16.~~] this chapter."

Shifting the current explicit cross-reference to HRS § 269-16 – the Commission's standard section for any utility rate increase application, with all of the public interest standards and important due process safeguards therein – to a more general reference to the entirety of HRS Chapter 269, may create uncertainty whether, for example, the requirement that electric utility rates be just and reasonable under HRS § 269-16(a) shall still apply to rates determined through performance-based regulation (PBR) under HRS § 269-16.1. Additionally, the proposed amendment may create uncertainty regarding whether the due process requirements for contested case procedures – in HRS Chapter 91 and HRS § 269-16(b), and in rate increase sections of Chapter 16-601, HAR that are currently enabled by HRS § 269-16(b), such as but not limited to the opportunities for interested stakeholders to seek intervention or participation – still apply in rate-determining and "rebasing" proceedings. The shift may also create uncertainty regarding whether the cross-reference in HRS § 269-16(b) that require public hearings

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1 Act 5 of the 2018 Regular Legislative Session is known as the Ratepayer Protection Act.

under the notice requirements of HRS § 269-12 will still apply; and if not, then affected ratepayers may be blindsided by rate increases. The Department does not support the bill's proposed amendments to create uncertainty about the applicability of public interest standards and important due process safeguards in HRS §§ 269-16 to 269-16.1.

More broadly, all of the proposed amendments to HRS § 269-16.1, including the proposed new HRS §§ 269-16.1(b) and (c) may have unintended consequences, such as limiting the ability of the current Commission and the Commission in the future to evaluate whether the mechanisms in and aspects of the existing performance-based model are actually working as intended or should be changed. The PBR Framework for Hawaii was initially developed through the Commission regulatory process in response to the Ratepayer Protection Act. The original Ratepayer Protection Act was quite specific about the development and use of performance incentives and penalty mechanisms. And so, the PBR Framework includes some performance incentive and penalty mechanisms (PIMs) that provide financial incentives, or in a small number of cases penalties, to the utility for achieving or not achieving a performance target, respectively.

However, the initial PBR Framework also includes components that are not based on performance, but were intended to provide an incentive for the utility to control costs, with the hope that such cost controls would succeed. These other components include a multi-year rate period (MRP), to be followed by a comprehensive review of the PBR Framework. There were also other components that are also not based on performance, but may provide *significant benefit to the utility*, such as an inflationary component to an annual revenue adjustment mechanism and an exceptional project recovery mechanism (EPRM).

The EPRM allows the utility immediate cost recovery of capital and operating expenses for Commission approved EPRM eligible projects. As one example, the Hawaiian Electric Companies have recently been seeking massive amounts of cost recovery through the PBR Framework's EPRM, seeking immediate recovery of capital costs and certain operating expenses on the implementation of projects under the Companies' Wildfire Safety Strategy (Docket No. 2025-0263 ~$350 million) and a Hawaiian Electric owned generation project (Docket No. 2025-0211, the Waiau Repower project ~$1.16 billion). If approved under the EPRM, these costs will increase rates significantly shortly thereafter over the lifetime of the project.

Much of these initial PBR Framework components that were not based on performance were not explicitly in the original Ratepayer Protection Act statutory language but was rather created in the initial regulatory implementation process to supplement the statute's more explicit performance incentive and penalty mechanisms. The Department is concerned that the totality of the proposed amendments to HRS § 269-16.1 would unreasonably restrict the current Commission and the Commission in the future in evaluating and improving the initial implementation.

The Department notes that the first MRP has ended, and the Commission is in the middle of a comprehensive review of the PBR Framework, including the start of a review of the PIMs and mechanisms of the PBR Framework with stakeholder input. The Hawaiian Electric Companies are also seeking to increase their "target revenues" amount through some sort of "rebasing". The Department contends that whether the Companies are electing to attempt to rebase their target revenues through a full-fledged cost-of-service rate case, an alternative simplified "streamlined" proposal, or without a direct rebasing but indirectly through proposed modifications to the PBR Framework, all of the critical public interest protections of HRS § 269-16, HRS § 269-12, and HAR Chapter 16-601 should apply to any rate increase request because provide critical public interest and consumer protections that must be preserved.

Thank you for the opportunity to testify on this bill.

Email: communications@ulupono.com

SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION &
ENERGY AND INTERGOVERNMENTAL AFFAIRS
Wednesday, February 4, 2026 — 9:30 a.m.

Ulupono Initiative strongly supports SB 2487, Relating to the Public Utilities Commission.

Dear Chair Keohokalole, Chair Wakai, and Members of the Committees:

My name is Micah Munekata, and I am the Vice President of Government Affairs at Ulupono Initiative. We are a Hawaiʻi-focused impact investment firm that strives to improve the quality of life throughout the islands by helping our communities become more resilient and self-sufficient through locally produced food, renewable energy, and clean transportation choices, and better management of freshwater resources.

Ulupono strongly supports SB 2487, which clarifies that, for electric utilities, "performance-based incentives" include revenue adjustment mechanisms, cost control mechanisms, rewards for superior performance, and penalties for subpar performance; confirms that the Public Utilities Commission may adopt alternative ratemaking procedures to establish electric utility rate and performance-based incentives; and requires the Commission to apply a presumption in favor of considering historical cost trends and external indices that reflect incentives to control costs if the Commission resets an electric utility's allowed revenues based on consideration of the utility's costs.

SB 2487 builds on the foundational Hawaiʻi Ratepayer Protection Act (Act 5, SLH 2018; codified as HRS § 269-16.1), by clarifying that, for purposes of utility regulation, "performance-based incentives" explicitly include cost control mechanisms, not just incentive metrics tied to reliability, customer service, or clean energy goals. The bill also affirms the Public Utilities Commission's authority to adopt alternative ratemaking procedures that break the traditional direct linkage between utility profits and capital investment — a core misalignment of the traditional cost-of-service model that inherently rewards increased spending rather than efficiency and customer value.

Finally, SB 2487 requires the Commission to adopt a presumption in favor of using historic cost trends and external indices that reflect incentives to control costs when reviewing utility cost justifications, rather than returning to a forward test year cost-of-service framework that can incentivize "wish lists" of capital projects and upward pressure on rates.

These provisions are not simply technical adjustments or a restatement of existing policy — they are a necessary legislative correction to ensure that the original intent of Act 5, SLH 2018, is preserved and fully implemented. In doing so, Hawai'i leads a pathway toward lasting regulatory reform centered on restraint, predictability, and efficiency.

The traditional cost-of-service regulatory structure, which bases utility revenues on recovering historic and projected costs plus a rate of return on capital investment, has long been understood nationally as misaligned with modern public policy and cost management goals. Under the model, utilities lack robust financial incentives to limit spending or advance cost-effective alternatives like accelerating adoption of utility-scale renewable energy and demand-side management or customer-owned distributed energy resources (DERs).

Performance-based regulation (PBR) represents an evolution in regulatory thinking: rather than paying utilities simply for their costs incurred, PBR seeks to tie a portion of utility revenue to performance on clear, measurable outcomes, including cost containment, reliability, integration of clean energy, and customer satisfaction. Prominent national organizations describing PBR note its potential to improve utility cost control over time while maintaining service quality — precisely the objective this bill reinforces.

A key focus of PBR — and of SB 2487 — is aligning utility performance incentives with customer and societal benefits rather than rewarding capital expenditures alone. As one national analysis explained it: "In all jurisdictions, utilities enable achievement of important societal goals. Performance-based regulation … motivates [them] to deliver on public goals as well as internal and fiduciary goals."[1]

This encapsulates why SB 2487's emphasis on cost control mechanisms and its presumption in favor of historical cost indices are not just administratively sound, but fundamentally in the public interest: they structurally reorganize utility incentives toward efficiency and customer value.

SB 2487 affirms and strengthens Hawai'i's leadership in utility regulatory innovation by enshrining clearer legislative direction for performance-based regulation, emphasizing cost control, and preventing backsliding to a traditional, cost-of-service paradigm that could lead to higher rates and poor alignment with customer interests. This bill supports predictable rates, reinforces legislative intent, and mirrors thoughtful reforms underway in other states.

For these reasons, we respectfully urge the Committees to pass SB 2487.

Thank you for the opportunity to testify.

Respectfully,

Micah Munekata
Vice President of Government Affairs

[1] https://www.ncsl.org/energy/performance-based-regulation-harmonizing-electric-utility-priorities-and-state-policy

TESTIMONY BEFORE THE SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION & ENERGY AND INTERGOVERNMENTAL AFFIARS

SB 2487
Relating to the Public Utilities Commission

Wednesday, February 4, 2026
9:30 AM
State Capitol, Conference Room 229 & Videoconference

Dear Chair Keohokalole, Chair Wakai, Vice Chair Fukunaga, Vice Chair Chang, and Members of the Committees,

Hawaiian Electric respectfully provides **comments** on SB 2487, Relating to the Public Utilities Commission.

Hawaiian Electric supports Performance Based Regulation (PBR). The bill seeks to clarify that the Public Utilities Commission (PUC) has certain authority with respect to implementing PBR. However, the bill is unnecessary.

In terms of clarifying that the PUC may adopt alternative ratemaking procedures to establish electric utility rates and performance-based incentives, the PUC, in Docket No. 2018-0088, has already approved Hawaiian Electric's and other stakeholders' request to pursue exactly this (an alternative process to consider rate rebasing and other PBR modifications). The process, which for the time being involves confidential discussions among the parties, has been constructive and is on-going.

The bill also proposes that the PUC apply a presumption in favor of considering historical cost trends and external indices that reflect incentives to control costs, rather than relying on a forward test period. Hawaiian Electric believes the PUC already has this discretion, especially if supported by parties to such a docket. As the preamble of the bill notes, any historical costs may be adjusted for known and measurable future changes.

Thank you for this opportunity to provide **comments** on SB 2487.

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

SENATE COMMITTEE ON ENERGY AND INTERGOVERNMENTAL AFFAIRS
Senator Glenn Wakai, Chair
Senator Stanley Chang, Vice Chair

TESTIMONY IN **SUPPORT** OF SENATE BILL 2487

February 4, 2026, 9:30 a.m.
Conference Room 229 & Videoconference
State Capitol
415 South Beretania Street

Aloha Chairs Keohokalole and Wakai, Vice-Chairs Fukunaga and Chang, and Committee Members:

Earthjustice **supports Senate Bill 2487**, "Relating to the Public Utilities Commission," which seeks to update and clarify the Ratepayer Protection Act, Act 5 of 2018 (codified in Hawaiʻi Revised Statutes § 269-16.1) to reaffirm the principles and process for performance-based regulation ("PBR") of Hawaiʻi's main electric utility, Hawaiian Electric Company. These amendments will help bolster the law's purpose of protecting ratepayers and the public interest by controlling utility costs and electric rates and aligning the utility's financial interests toward delivering performance on priorities such as enabling customers to save money by shifting from fossil fuels to clean energy.

Earthjustice has almost two decades of experience practicing before the Hawaiʻi Public Utilities Commission. Throughout that span, we have engaged in the ongoing efforts over many years and numerous dockets to reform utility incentives and align utility interests with performance. This movement gained particular focus and momentum over 10 years ago, when the commission issued its landmark "Inclinations on the Future of Hawaiʻi's Utilities" document in 2014. It then came into fruition with the legislature's passage of Act 5 and the commission's opening of its comprehensive PBR proceeding, Docket No. 2018-0088. As SB 2487's preamble recognizes, this historic process established the PBR framework in Hawaiʻi, which has been recognized as a leading model for the necessary and beneficial transition from traditional cost-of-service regulation to modern PBR.

This progress, however, was cast into doubt when the commission under previous leadership departed from its historic direction and adopted HECO's proposal to initiate a traditional general rate case to "re-base" (i.e., increase) the utilities revenues and rates. This switch in direction would backtrack on PBR, re-anchor utility rates and incentives in the outdated and inefficient cost-of-service model, and open the way to a historic rate hikes. These

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concerns were starkly highlighted in the public informational briefing that the Senate Committee on Commerce and Consumer Protection held in June of last year.

SB 2487 would help reaffirm the basic principles of PBR, including the legal mandate to "break the direct link between allowed revenues and investment levels" under cost-of-service regulation. This is particularly necessary since, although Act 5 and HRS § 269-16.1 should be clear enough in enabling the commission to pursue a new course under PBR, the commission has signaled a perspective that existing law may tie its hands and require a return to a cost-of-service ratemaking process. The Consumer Advocate has taken an even harder line that existing legal provisions dictate a cost-of-service rate case.

SB 2487 thus provides the necessary clarification to uphold Act 5's original mandate and principles. It should be emphasized that the bill simply reaffirms the PBR framework that the legislature and commission have established. Most of the amendments simply update terms and provide clarifications based on the progress since Act 5. The main amendments include:

► Updating terms by referring to "performance-based incentives" as a general encompassing term, which includes "revenue adjustment" and "cost control" mechanisms, as well as both reward and penalty mechanisms. These are terms and elements the commission has established in the PBR framework.

► Making clear that the commission may adopt alternative ratemaking procedures besides a traditional rate case to establish rates and performance-based incentives. The commission pursued such an alternative path in establishing the PBR framework and is currently considering such a process. This amendment would confirm that the commission has this discretion.

► Providing that, if the commission resets utility revenues based on the utility's costs, it should apply a presumption in favor of considering historical cost trends and external indices that reflect incentives to control costs. This conforms with PBR by ensuring that ratemaking focuses on performance in controlling costs, rather than "wish lists" produced under a projected "forward test year" approach.

In sum, SB 2487 provides the commission constructive support—and ultimately, the *discretion*—to implement the PBR framework, rather than being bound to outdated and inefficient cost-based protocols. For these reasons, Earthjustice fully supports SB 2487 and recommends that it be passed.

Mahalo for the opportunity to testify. Please do not hesitate to contact us with any questions or for futher information.

Isaac H. Moriwake, Esq.
Managing Attorney
Earthjustice, Mid-Pacific Office

HAWAII CLEAN POWER ALLIANCE

TESTIMONY TO THE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION AND COMMITTEE ON ENERGY & INTERGOVERNMENTAL AFFAIRS

9:30 AM, FEBRUARY 04, 2026

Conference Room 229 & Via Videoconference

SB 2487 Support with Comments

Chair Keohokalole, Chair Wakai, Vice Chair Fukunaga, Vice Chair Chang and Members of the Committees,

Hawaii Clean Power Alliance (HCPA) is a nonprofit alliance organized to advance and sustain the development of clean energy in Hawaii. Our goal is to support the state's policy goal of 100 percent renewable energy by 2045. We advocate for utility-scale renewable energy, which is critical to meeting the state's clean energy and carbon reduction goals.

HCPA is in support of SB2487 and the Legislature's continued commitment to the Hawaii Ratepayer Protection Act. The bill appropriately clarifies that performance-based regulation functions as an integrated framework, rather than a collection of individual mechanisms, and reinforces the importance of aligning utility financial outcomes with ratepayer interests.

The timing of this clarification is appropriate as the State approaches the conclusion of its first multi-year rate period. As the framework matures, implementation choices will increasingly determine whether performance-based regulation delivers sustained customer benefits.

From a consumer protection standpoint, it remains important that revenue adjustment mechanisms, retained savings, and performance incentives operate in a coordinated manner. Each tool can serve a legitimate role, but when layered without sufficient discipline they can cumulatively increase utility earnings even as customer bills rise. Maintaining a system-level view is therefore central to preserving ratepayer confidence in the framework.

The bill's presumption favoring historical cost trends when revenues are reset is an important safeguard. Because rebasing establishes the foundation on which future indexation and incentives compound, continued attention to this principle will be critical to avoiding unintended long-term rate impacts.

Similarly, performance incentives are most effective when they are balanced, outcome-focused, and proportionate to the customer value they produce. Experience elsewhere underscores the importance of symmetry and scale in ensuring incentives reinforce consumer protection objectives.

SB2487 strengthens Hawaii's performance-based regulatory framework by reaffirming its structure and intent. With continued attention by the Public Utilities Commission to earnings discipline, incentive design, and revenue resets, the framework can continue to deliver improved service and cost control while keeping ratepayers at the center.

For these reasons, HCPA supports SB2487 and appreciates the Committee's leadership in advancing a consumer-focused approach to energy regulation.

Thank you for the opportunity to provide testimony.