
A BILL FOR AN ACT

RELATING TO THE PUBLIC UTILITIES COMMISSION.

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

1 SECTION 1. This Act shall be known and may be cited as the
2 "Hawaii Ratepayer Protection Act of 2026".

3 SECTION 2. The legislature finds that, in 2018, the
4 legislature enacted the Hawaii Ratepayer Protection Act to
5 provide proactive protections to the State's electric utility
6 customers. Act 5, Session Laws of Hawaii 2018 (Act 5), provided
7 that electric utility rates would be considered just and
8 reasonable only if they are derived from a performance-based
9 model for determining utility revenues. Act 5 emphasized that
10 the State should adjust electric utilities' interests to better
11 align with customers' interests. The legislature found that
12 there was "extraordinary urgency" for this realignment.

13 Act 5 directed the public utilities commission to establish
14 a performance-based model for utility regulation and ratemaking
15 based on performance incentives that "directly tie an electric
16 [utility's] revenues to that utility's achievement on
17 performance metrics and break the direct link between allowed



1 revenues and investment levels." The intent of this
2 performance-based model was to depart from the traditional
3 cost-of-service model that rewards utilities for increasing the
4 utility's capital expenditures and bases allowed revenues on the
5 value of the rate base, irrespective of the utility's
6 performance. The legislature recognized that the traditional
7 model misaligned the interests of customers and utilities
8 because it created a possible bias toward utilities that
9 expended capital on utility-owned projects, rather than
10 utilities that supported more efficient or cost-effective
11 options like customer-owned distributed energy resources or
12 independent, third-party projects. The legislature concluded
13 that the State needed a shift away from the traditional focus on
14 utility costs to a more modern focus on performance.

15 The legislature further finds that, in response to the
16 Hawaii Ratepayer Protection Act, the public utilities commission
17 opened its performance-based regulation proceeding as a
18 historic, multi-phase process that included participation from
19 local and national experts. In December 2020, the commission
20 established a comprehensive framework for performance-based
21 regulation that has since been nationally recognized as a



1 leading model. The guiding principles for this framework
2 include a customer-centric approach, including day-one savings
3 for customers, administrative efficiency through a simplified
4 regulatory framework, and utility financial integrity with the
5 opportunity to earn profits and rewards through performance.
6 The main features of the framework include a multi-year rate
7 period of five years, during which the utility's allowed
8 revenues are determined not by traditional rate cases but by an
9 objective index tied to general inflation. The utility's
10 profits are driven largely by its ability to capture cost
11 savings and efficiencies. The framework also includes
12 performance incentive mechanisms to reward or penalize a utility
13 based on its performance on public interest priorities like
14 reliability, accelerated progress toward renewable energy, and
15 improved customer service. The commission emphasized that, with
16 the transition away from traditional cost-of-service regulation,
17 customers would benefit from lower utility costs.

18 In establishing the performance-based framework, the public
19 utilities commission recognized the need for a transformative
20 and lasting shift away from cost-of-service regulation. The
21 commission made clear that, after the five-year rate control



1 period, the commission anticipated continuing to refine the
2 performance-based framework and did not envision returning to
3 cost-of-service regulation. However, now that the end of the
4 rate control period is approaching, the legislature is concerned
5 about the integrity of the performance-based framework and the
6 commission's compliance with the Hawaii Ratepayer Protection
7 Act. For example, last year, the commission adopted the
8 utility's proposal to initiate a traditional, cost-of-service
9 rate to "re-base" the utility's allowed revenues using its
10 projected increased costs. This cost-based rebasing of revenues
11 backtracks on the progress and reforms the State has made and
12 violates the commission's previous commitment not to return to
13 cost-of-service regulation.

14 The legislature is also aware that the public utilities
15 commission has insisted on requiring a "forward test year"
16 approach to the rate case, in which a utility requests a rate
17 increase based on future cost projections, rather than the
18 historical cost trends that have been controlled under the
19 performance-based framework. This return to forecast
20 cost-of-service ratemaking encourages utilities to make "wish
21 lists" of capital projects to boost utility profits, thereby



1 inflating customer rates. However, the predominant practice in
2 rate cases is to use historical costs adjusted for known and
3 measurable changes, rather than forecast future costs, as the
4 basis for regulatory rate analyses. Jurisdictions using
5 forecast costs instead of historical costs end up paying
6 substantially higher rates.

7 The legislature recognizes that the public utilities
8 commission has expressed the belief that it is constrained by
9 existing legal provisions to follow certain traditional cost-
10 bound methods, notwithstanding the mandates of the Hawaii
11 Ratepayer Protection Act. As a result, the commission is
12 inviting a return to "cost-plus" ratemaking that threatens to
13 undermine the benefits and progress achieved under the
14 performance-based framework. This poses the risk of significant
15 rate increases for customers.

16 Based on this stance by the public utilities commission and
17 the risk of rate increases for customers, the legislature
18 believes that further clarification and guidance are needed to
19 ensure that the commission upholds the legislature's original
20 intent under the Hawaii Ratepayer Protection Act and continues
21 the progress made under the commission's performance-based



1 regulatory framework. These clarifications will help ensure
2 that both electric utilities and ratepayers will continue to
3 benefit from the utilities' improved performance, lower costs,
4 and lower rates.

5 Accordingly, the purpose of this Act is to provide
6 clarification and guidance by:

- 7 (1) Requiring the public utilities commission to establish
8 performance-based incentives, including revenue
9 adjustment mechanisms, cost control mechanisms, and
10 reward and penalty mechanisms on or before January 1,
11 2027;
- 12 (2) Clarifying that the public utilities commission is
13 authorized to adopt alternative ratemaking procedures
14 to establish electric utility rates and performance-
15 based incentives; and
- 16 (3) Requiring the public utilities commission to apply a
17 presumption in favor of considering historical cost
18 trends and external indices that reflect incentives to
19 control costs if the commission resets an electric
20 utility's allowed revenues based on consideration of
21 the utility's costs.



1 SECTION 3. Section 269-16.1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§269-16.1 [Performance incentive and penalty mechanisms.]~~

4 Performance-based incentives; regulation of electric utility

5 rates. (a) On or before January 1, ~~[2020,]~~ 2027, the public

6 utilities commission shall establish ~~[performance]~~

7 performance-based incentives, including revenue adjustment

8 mechanisms, cost control mechanisms, and reward and penalty

9 mechanisms, that directly tie an electric ~~[+]utility's[+]~~

10 revenues to that utility's ~~[achievement-on]~~ performance

11 ~~[metrics]~~ and break the direct link between allowed revenues and

12 investment levels. The ~~[performance]~~ performance-based

13 incentives [and penalty mechanisms], as may be amended by the

14 public utilities commission from time to time, shall apply to

15 the regulation of electric utility rates under ~~[section 269-16.]~~

16 this chapter.

17 (b) Notwithstanding any law to the contrary, including the

18 ratemaking procedures described in section 269-16, the public

19 utilities commission may adopt, by commission order, alternative

20 ratemaking procedures to establish electric utility rates and

21 performance-based incentives for purposes of subsection (a);



1 provided that the rates shall be derived from a
2 performance-based model for determining utility revenues.

3 (c) If resetting an electric utility's allowed revenues
4 based on consideration of the utility's costs, the commission
5 shall apply a presumption in favor of considering historical
6 cost trends and external indices that reflect incentives to
7 control costs, rather than relying on a forward test period.

8 [~~(b)~~] (d) In developing [performance incentive and penalty
9 mechanisms], performance-based incentives, the public utilities
10 commission's review of electric utility performance shall
11 consider[, but not be limited to,] the [following]:

12 (1) [~~The economic~~] Economic incentives and cost-recovery
13 mechanisms described in section 269-6(e);

14 (2) Volatility and affordability of electric rates and
15 customer electric bills;

16 (3) [~~Electric service reliability;~~] Reliability of
17 electric service;

18 (4) [~~Customer~~] Level of customer engagement and
19 satisfaction, including customer options for managing
20 electricity costs;



1 (5) [~~Access to~~] Accessibility of utility system
 2 information, including [~~but not limited to public~~
 3 ~~access to~~] electric system planning data [~~and~~],
 4 aggregated customer energy use data [~~and individual~~
 5 ~~access to~~], and granular information about an
 6 individual customer's own energy use data;

7 (6) Rapid integration of renewable energy sources,
 8 including quality interconnection of customer-sited
 9 resources; and

10 (7) Timely execution of competitive procurement,
 11 third-party interconnection, and other business
 12 processes.

13 [~~(e)~~] (e) This section shall not apply to a member-owned
 14 cooperative electric utility."

15 SECTION 4. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect on July 1, 3000.



Report Title:

PUC; Ratemaking; Performance-Based Incentives; Hawaii Ratepayer Protection Act of 2026

Description:

Requires the Public Utilities Commission to establish performance-based incentives, including revenue adjustment mechanisms, cost control mechanisms, and reward and penalty mechanisms on or before 1/1/2027. Clarifies that the Public Utilities Commission is authorized to adopt alternative ratemaking procedures to establish electric utility rates and performance-based incentives. Requires the Public Utilities 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. Effective 7/1/3000. (HD1)

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