ACT 55

S.B. NO. 2752

A Bill for an Act Relating to Electric Utilities.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that electricity generation projects in Hawaii requiring external financing must typically enter into one or more long-term power purchase agreements with an electric utility before investors will provide such financing. For financial rating agencies that observe and evaluate the effect of these power purchase agreements, including Standard & Poor's, such contracts create fixed debt-like financial obligations for the electric utility that represent substitutes for debt-financed capital investments in generation capacity. To properly take into account the fixed obligations in a way that reflects the credit exposure that is added by the power purchase agreements, the financial rating agencies represent, or impute, the impact of a power purchase agreement to the contracting electric utility's balance sheet in the form of a new debt obligation. This new obligation is typically referred to as imputed debt or debt equivalence.

Rating agencies may impute to a utility's debt level an amount up to fifty per cent or more of the existing payments on a power purchase agreement, resulting in significant amounts of imputed debt hampering a contracting utility's debt rating and impeding that utility's debt financing. Compensating factors, including legislative provisions for the mitigation of imputed debt on utility companies' balance sheets, are noted as being important variables in either raising or lowering debt equivalence levels. Without an available offsetting mechanism, imputed debt obligations on electric utilities for electricity generation projects can ultimately have a major chilling effect on energy development, especially in states pursuing ambitious renewable energy goals.

Reducing the imputed debt obligations of electric utilities can benefit electric utility customers by maximizing the utilities' ability to negotiate low cost, fixed price renewable energy contracts. In addition, the elimination of power purchase agreement-created imputed debt obligations of a utility can lower capital costs for that utility, which helps to mitigate energy costs for consumers through lower rates.

The purpose of this Act is to authorize the public utilities commission to allow electric utilities operating within the State to recover all power purchase costs.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§269- **Power purchase agreements; cost recovery for electric utilities.** All power purchase costs, including costs related to capacity, operations and maintenance, and other costs that are incurred by an electric utility company, arising out of power purchase agreements that have been approved by the public utilities commission and are binding obligations on the electric utility company, shall be allowed to be recovered by the utility from the customer base of the electric utility company through one or more adjustable surcharges, which shall be established by the public utilities commission. The costs shall be allowed to be recovered if incurred as a result of such agreements unless, after review by the public utilities commission, any such costs are determined by the commission to have been incurred in bad faith, out of waste, out of an abuse of discretion, or in violation of law. For purposes of this section, an "electric utility company" means a public utility as defined under section 269-1, for the production, conveyance, transmission, delivery, or furnishing of electric power."

SECTION 3. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect on July 1, 2012.

(Approved April 23, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.