



SIERRA CLUB OF HAWAI'I

MĀLAMA I KA HONUA. *Cherish the Earth.*

VIA EMAIL

TO: Dr. Bruce Anderson, Director
Hawai'i Department of Health
1250 Punchbowl Street
Honolulu, Hawai'i 96813
Bruce.s.Anderson@doh.hawaii.gov

ATTN: Steve Jacobson, Hearing Officer

FROM: Marti Townsend, Director
Sierra Club of Hawai'i
P.O. Box 2577
Honolulu, Hawai'i 96803
hawaii.chapter@sierraclub.org

DATE: September 27, 2019

RE: Request for Contested Case Hearing Re: Greenhouse Gas Emission Reduction Plan Proposed by AES Hawai'i for Covered Source Permit No. 0087-02-C Re-Submitted on October 30, 2018

The Sierra Club is formally requesting a contested case hearing on AES's plan for sharing greenhouse gas emissions with cleaner energy facilities throughout the state.

The Sierra Club submitted written comments in opposition to the AES plan for "reducing" greenhouse gas emissions on May 30, 2018 and May 19, 2019. The Sierra Club also verbally requested a contested case hearing at the public hearing on this proposal held on September 26, 2019. Copies of both of our comment letters are attached to this request for a contested case hearing. These comment letters document our concern and opposition to the proposed plan based on the Director's legal obligation to control air pollution, the applicant's failure to propose a plan that actually reduces emissions below current levels, and the applicant's failure to fully consider other viable options for reducing its greenhouse gas emissions in order to comply with state law. We are also concerned that this proposal, if granted, would create a future disincentive to reduce emissions from the other sources included in this plan.

Climate change is a clear and urgent danger to the quality of life for all of Hawai'i's residents. Greenhouse gas emissions are the direct cause of climate change. Yet, this plan fails to fully grapple with the implications of failing to reduce greenhouse gas emissions to the fullest extent

possible. We look forward to the opportunity to provide detailed information to the Department on why it should not approve this plan.

Thank you very much for the opportunity to present public testimony and request this contested case hearing.



SIERRA CLUB OF HAWAI'I

MĀLAMA I KA HONUA. *Cherish the Earth.*

ATTACHMENT A

May 15, 2019

Michael Madsen
Clean Air Branch
Department of Health
2827 Waimano Home Road
Hale Ola Building Room 130
Pearl City, HI 96782

Aloha Mr. Madsen,

The purposes of this letter are to:

- I. renew our requests for on-going notice, a public hearing, and a contested case hearing,
- II. raise additional concerns about the proposed action
- III. resubmit our original comment letter dated May 30, 2018 (attachment A)

I. Notice and hearings requested

A. No notice of current comment period

In our May 30, 2018 letter, we requested email notice for greenhouse gas emission plans and public comment periods. We did not receive notice of this public comment from the Department of Health. Please add the Sierra Club to the mailing list for notice of public comment periods.

B. Public hearing requested

As outlined in our May 30, 2018 letter, a public hearing on this matter is warranted. This is a complex partnership proposal that would share emission quotas across the entire state. Such a novel approach to reducing greenhouse gas emissions warrants full public disclosure and vetting. A public hearing will aid the Department's staff in its consideration of the partnership proposal.

C. Contested case hearing requested

We renew our request for a contested case hearing should the Department decide to grant this partnership proposal that does not actually reduce harmful greenhouse gas emissions from the largest and dirtiest energy producer in the Hawaiian Islands.

II. Additional concerns: AES' plan could allow for increased emissions

A. Facilities unrelated to each other should not share GHG emission quotas

The current partnership proposal would allow energy facilities with particularly high GHG emissions, like AES and Kalaeloa Partners LP to exploit the existing 25-27% decline in emissions already in place at unrelated facilities operated on other islands. Comparatively lower emissions rates already experienced on Maui does nothing to improve overall air quality for the residents of West O'ahu. In addition, we are concerned that the proposed permit as currently drafted would allow individual facilities to increase their GHG emissions because emissions may be lower at another completely unrelated facility.

B. AES' plan does not account for unused emissions post-2022

As AES' proposal makes clear, this facility is not expected to operate after 2022 because its 30-year power purchase agreement with Hawaiian Electric Company will have expired. The proposed permit is not silent about what happens in 2023. AES' actual emissions in 2023 will be zero, so the GHG reduction partnership should reflect that the overall GHG emissions quota should be reduced by nearly 1.7 million tpy in 2023.

Sincerely,

Marti Townsend
Director
Sierra Club of Hawai'i



SIERRA CLUB OF HAWAII

MĀLAMA I KA HONUA. *Cherish the Earth.*

Attachment B

May 30, 2018

Clean Air Branch
Department of Health
2827 Waimano Home Road
Hale Ola Building Room 130
Pearl City, HI 96782

Clean Air Branch:

This letter has four purposes. First, pursuant to HAR § 11-60.1-205(b)(4)(B) the Sierra Club wishes to be placed on the mailing list for those wishing notification of a public comment period on the AES plan and any other plan submitted pursuant to Hawai'i Administrative Rule chapter 11-60.1, subchapter 11. Second, pursuant to HAR § 11-60.1-205, the Sierra Club asks that that the Department of Health hold a public hearing on AES' Greenhouse Gas Emission Reduction Plan (submitted February 28, 2018). Third, the Sierra Club provides notice that it wishes to petition for a contested case hearing pursuant to HAR § 11-60.1-206 because it objects to that plan. And fourth, the Sierra Club wishes to outline some of its objection to that plan.

I. Request to be Placed on Mailing List

The Sierra Club can be notified of greenhouse gas emission plans and public comment periods at:

Email is preferred at: hawaii.chapter@sierraclub.org and ana.boyd@sierraclub.org

Or

P.O. Box 2577
Honolulu, HI 96803

II. Request for a Public Hearing

The Sierra Club is a national non-profit organization with more than 60 chapters and more than 800,000 members nationwide. It includes a chapter in Hawai'i that was founded in 1968

and is registered to do business in the state. The Sierra Club is a leading public interest organization and the largest public interest environmental and clean energy membership organization in Hawai‘i, with more than 18,000 members and supporters across the state. Sierra Club members include those who live, work, attend school, travel, and recreate around the AES coal plant and are directly affected by the pollution emitted by the plant; people who are affected by climate change including sea level rise; people who work, invest, participate in the clean energy field and marketplace; members of households and businesses who have installed or intend to install clean energy measures such as energy efficiency and distributed energy resources; beneficiaries of the public trust in Hawai‘i’s natural resources and citizens with rights to “a clean and healthful environment” under Hawai‘i State Constitution Article XI, §§ 1 and 9.

The Sierra Club’s mission includes as its top priorities advancing clean energy, reducing fossil fuel use and climate pollution, and promoting energy independence and climate security. The Sierra Club staff and volunteers were intimately involved in advocating for the Greenhouse Gas Emissions Act and participated in the public rulemaking process for subchapter 11 of title 11 chapter 60.1. The Sierra Club, locally and nationally, has also been involved for years in a host of clean energy initiatives, including advancing legislation and policies including such as Hawai‘i’s renewable portfolio standard, engaging in legal proceedings regarding energy utilities, infrastructures, and markets, and conducting multi-state Beyond Coal campaigns. The Sierra Club’s organizational interests, nationally and locally, prominently include promoting the swift and decisive transition away from dirty fuels, including coal, and toward clean energy. These interests directly relate to AES’ greenhouse gas “reduction” plan, which will unnecessarily allow more carbon emissions than currently allowed by law.

A hearing on AES’s plan is warranted because AES is the second largest source of greenhouse gas emissions statewide. Given the clearly articulated purposes of the Greenhouse Gas Emissions, 2007 Haw. Sess. Law, Act 234, the public should have the right to be heard when a multi-million-dollar corporation asks to be, in effect, exempted from the requirements of the law. Moreover, the local communities impacted by the pollution from the plant have a right to voice their concerns about the proposed trading scheme that swaps pollution reduction from AES to other locales.

III. Request for a Contested Case Hearing

If the department approves (or “grants”) AES’ draft greenhouse reduction plan, the Sierra Club would want a contested case hearing. Similarly, if the department denies the plan and AES asks for a contested case hearing, the Sierra Club will ask to intervene.

Given this request, the Sierra Club asks that the department take affirmative steps now to ensure that whomever will be the decisionmaker in the contested case hearing is not the person involved in the initial decisionmaking on the proposed draft greenhouse gas emission reduction plan.

IV. Objections to AES' plan

The Department of Health should reject AES' plan because it is inadequate. The AES plan (a) fails to reduce greenhouse emissions at all; (b) neglects to consider realistic means of reducing these emissions; and (c) impermissibly attempts to partner with Hawaiian Electric to mask its emissions.

A. AES' plan fails to reduce emissions.

HAR § 11-60.1-204(c) requires that AES reduce its emissions by 16% below the facility's baseline levels. AES has not proposed an alternative emissions cap resulting in the maximum greenhouse gas reductions. It has failed to establish a meaningful "minimum facility-wide greenhouse gas emissions cap in tons per year CO₂e, to be achieved by 2020 and maintained thereafter" as required by HAR § 11-60.1-204(c). In fact, it has not proposed reducing its emissions at all.

B. AES' plan fails to consider realistic alternatives.

AES has failed to consider realistic alternatives. AES' plan fails to consider restrictive operations as required by HAR § 11-60.1-204(d)(3)(E). AES could simply reduce the amount of electricity it produces by 16% to allow for a reduction in emissions. At the very least, DOH should require such a reduction in 2022 when AES' power purchase agreement with HECO expires. The power purchase agreement should not be used as an excuse to avoid the clear requirements of the Greenhouse Gas Emissions Act and HAR § 11-60.1-204(c).

HAR § 11-60.1-204(d)(3)(B) and (D) requires that AES consider fuel switching and operational improvements. One operational improvement that AES could undertake is employing battery storage technology to capture excess electricity produced by PV systems during the day. This electricity would be available during evening and peak demand hours, thereby allowing AES to burn less coal. In fact, AES has installed a 100 MWh five-hour duration battery energy storage system on Kaua'i in collaboration with KIUC. AES started deploying large utility-scale storage a decade ago, making it a seasoned veteran in the new and emerging advanced energy storage world. It has announced plans to build a 100MW/400 MW-hr lithium-ion battery storage system in Long Beach, California.

C. AES' partnering proposal is fundamentally flawed.

HAR § 11-60.1-204(d)(6)(A) provides no explicit criteria for the department to judge whether to accept a partnering agreement or not. But guidance can be found in the law and the legislative history.

The legislature mandated that "the director **shall** prevent, control, and abate **air pollution** and the emission of air pollutants in the State." HRS § 342B-3 (emphasis added). Furthermore, the

legislature charged the director of the department of health to enact rules “[e]stablishing greenhouse gas emission limits applicable to sources or categories of sources, **to be achieved** by January 1, 2020, and establishing emission reduction measures to achieve the **maximum** practically and technically feasible and cost-effective **reductions in greenhouse gas emissions** in furtherance of achieving the statewide greenhouse gas emissions limit.” HRS § 342B-72(a)(1) (emphasis added). In enacting the Greenhouse Gas Emissions Act, the legislature found that:

the earth's atmosphere is now warming at the fastest rate in recorded history, a trend that is projected to cause extensive damage to forests, marine ecosystems, and agriculture. Human communities are also threatened by climate change as seas rise, storms become more intense, and episodes of drought and flooding increase. The scientific evidence is now compelling that recent climate change is caused at least in part by human activities, especially the burning of fossil fuels, which has driven atmospheric carbon dioxide concentrations to their highest levels in four hundred twenty thousand years.

The legislature further finds that climate change poses a serious threat to the economic well-being, public health, natural resources, and the environment of Hawaii. The potential adverse effects of global warming include a rise in sea levels resulting in the displacement of businesses and residences and the inundation of Hawaii’s freshwater aquifers, damage to marine ecosystems and the natural environment, extended drought and loss of soil moisture, an increase in the spread of infectious diseases, and an increase in the severity of storms and extreme weather events.

On February 2, 2007, the Intergovernmental Panel on Climate Change, a body established by the United Nations, released its fourth assessment of the predicted impacts of global climate change. The panel predicted temperature rises of up to eleven and a half degrees fahrenheit by 2100 and a sea level rise of up to twenty-three inches, with an additional 7.8 inches possible if current melting of the ice sheets in Greenland and Antarctica continues.

Climate change will have detrimental effects on some of Hawaii's largest industries, including tourism, agriculture, recreational, commercial fishing, and forestry. It will also increase the strain on electricity supplies necessary to meet the demand for air conditioning during the hottest times of the year.

2007 Haw. Sess. Laws Act 234 §1. Article XI section 1 of the Hawai`i State Constitution mandates that the Department of Health act consistently with its public trust responsibilities. Given the mandatory duties identified in HRS §§ 342B-3 and 342B-72(a)(1), the obligations imposed by the public trust doctrine, and the legislature’s clearly expressed intent, it would be arbitrary and capricious for the health department to essentially absolve AES from the need to reduce is emissions at all under the guise of a partnership agreement. The health department may **not** refrain from controlling air pollution when it has the opportunity to do so.