

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - HAWAII**

### **Matter of Maui Electric Company, Limited**

**Supreme Court of Hawai'i - March 2, 2022 - P.3d - 2022 WL 612072**

Community group sought review of the Public Utilities Commission's (PUC) approval of power purchase agreement (PPA) to purchase solar energy, 2020 WL 6018521, and denial of group's motion for reconsideration.

The Supreme Court held that:

- Statutes governing PUC's PPA review reflect core state constitutional public trust principles;
- PUC discharged its statutory duty to assess the public interest and consider potential anticompetitive issues; and
- PUC complied with its statutory obligation to consider the need to reduce state's reliance on fossil fuels.

Statutes governing the Public Utilities Commission's (PUC) power purchase agreement (PPA) review reflect core state constitutional public trust principles, in that the state and its agencies must protect and promote the justified use of Hawai'i's natural beauty and natural resources; thus, when there is no reasonable threat to a trust resource, satisfying those statutory provisions fulfills the PUC's obligations as trustee.

Public Utilities Commission (PUC) discharged its statutory duty to assess the public interest and consider potential anticompetitive issues in approving power purchase agreement (PPA) for purchase of solar energy, despite contention that after bid selection all finalists hired same legal counsel to negotiate non-price PPA terms and some of those terms were similar or identical across projects; PUC did not dodge concerns about shared counsel and investigated and made specific findings, approval order reflected that PUC considered vetting mechanisms built into procurement process and concluded it had sufficient assurance that PPA was negotiated in good faith and without collusion, and PUC determined that solar company's choice of counsel did not have any adverse impact on pricing and terms.

Public Utilities Commission (PUC) complied with its statutory obligation to consider the need to reduce state's reliance on fossil fuels through energy efficiency and increased renewable energy generation when approving power purchase agreement (PPA) for purchase of solar energy; PUC reviewed electric company's greenhouse gas analysis, methodology, and data and found that project would result insignificant reduction in emissions, PUC evaluated state's energy policy and project's anticipated financial savings, PUC considered benefits of having dispatchable renewable energy, PUC identified permits that solar company would have to obtain, impact studies related to those permits, and agency review, and PUC considered solar company's efforts to explore an alternative site.