



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)	)	
HAWAIIAN ELECTRIC COMPANY, INC.	)	Docket No. 01-0480
	)	
For Approval of a License to Use	)	Decision and Order No.19398
Warehouse Space with the Hawaii	)	
Natural Energy Institute of the	)	
University of Hawaii at Manoa.	)	
_____	)	

DECISION AND ORDER

I.

By an application filed on December 28, 2001, HAWAIIAN ELECTRIC COMPANY, INC. (HECO) requests commission approval of a license to the Hawaii Natural Energy Institute of the University of Hawaii at Manoa (HNEI), dated December 4, 2001 (License). The License will allow HNEI to use approximately 4,000 square feet of warehouse space at HECO's Ward Avenue facilities for the installation and operation of a fuel cell test facility (Fuel Cell Facility). This request is made pursuant to Hawaii Revised Statutes (HRS) § 269-19.

HECO served copies of its application on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate). On March 8, 2002 the Consumer Advocate served information requests (IRs) on HECO. On March 22, 2002, HECO filed its responses to the Consumer Advocate's IRs. On May 2, 2002, the Consumer Advocate served its second submission of IRs on HECO. On May 10, 2002, HECO filed its responses to the Consumer Advocate's second submission of IRs. On May 30, 2002,

the Consumer Advocate filed its position statement, indicating that it does not oppose the approval of HECO's application, subject to certain qualifications.

II.

A.

The License will allow HNEI the use of approximately 4,000 square feet of warehouse space at HECO's Ward Avenue facilities for the installation and operation of the Fuel Cell Facility. The Fuel Cell Facility will be used to conduct research in the development and testing of fuel cells and fuel cell systems, including the use of alternate fuels. HECO also states that UTC Fuel Cells (UTCFC)<sup>1</sup> will be a primary client of the Fuel Cell Facility. UTCFC will use the Fuel Cell Facility to test its own designs and materials.

The following describes the essential terms of the License.

1.

Term

The License will be provided on a month-to-month basis and may be cancelled by either HECO or HNEI upon 30 days prior written notice. The License will commence upon commission approval.

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<sup>1</sup>In September 2001, UTCFC (fka International Fuel Cell Corporation) completed an agreement to establish a Fuel Cell Facility in Hawaii. UTCFC is a subsidiary of United Technologies Corporation (a for-profit corporation with 2001 revenues of approximately \$28 billion).

2.

License Fee

The base monthly rent to be paid to HECO for the License is \$10.00. The base rent may be adjusted at anytime after one year from the execution of the License. In addition, HNEI shall pay all taxes and assessments (if any) against the premises, including the public service company tax, public utility commission tax and any other applicable taxes. An interest charge on all delinquent fees, charges, and rental owed to HECO by HNEI will be assessed on a per annum basis as determined by HRS § 103-10.

3.

Assignment

HNEI will not assign or sublet the License, or part with possession of the premises in whole, or in part, without the prior consent of HECO.

4.

Indemnity

HNEI, to the extent expressly permitted by law, shall indemnify, defend and hold harmless HECO, its employees, directors, and agents from and against any actions, suits, damages, losses, liabilities, claims, costs or expenses, on account of any personal injury or death, alleged or real, and damages to property, alleged or real, arising out of, incident to, or resulting directly or indirectly from anything done or omitted by HNEI or anyone employed by HNEI, or HNEI's use or

possession of the premises, whether due to the condition or imperfections of the premises or any improvement thereon, except to the extent such injury or damage is caused by the sole negligence or gross negligence or willful misconduct of HECO, its employees, directors, or agents.

B.

In addition to allowing HNEI to use the licensed area, HECO will be providing the following contributions to HNEI:

a. HECO is setting a "nominal" base monthly license rate, \$10 per month. HECO plans to record the revenues associated with the monthly rate in NARUC Account No. 454, Rent From Electric Property.

b. HECO is performing support for the construction of the Fuel Cell Facilities. HECO support will include: (1) the relocation of existing materials from its warehouse; (2) improvements and construction at the warehouse (e.g., repair or replacement of exterior wall and windows, utility connections for electrical, water, and sewage, installation of bathroom facilities, installation of floor drains for emergency eyewashes); (3) the research of applicable codes and ordinances (e.g., fire and building codes, environmental laws and land use ordinances) to ensure that the Fuel Cell Facility is in compliance.; and (4) assistance in permit acquisition, utility hookup, and the set-up and installation of the Fuel Cell Facility.

HECO states that the costs associated with the contributions will be recorded as Research and Development (R&D) expenses in NARUC account 506, Miscellaneous Steam Power Expenses.

c. HECO intends to provide funding for the on-going costs related to the provision of electricity, water and sewer charges to the Fuel Cell Facility. HECO states that these costs will be recorded as R&D expenses in NARUC account 506, Miscellaneous Steam Power Expenses.

### C.

HECO states that granting the License to HNEI and agreeing to provide support for the Fuel Cell Facility is consistent with the actions set forth in HECO's "IRP Plan 1998-2017", dated January 30, 1998, filed in Docket No. 95-0347 (2<sup>nd</sup> IRP Plan). On page 12-20 of HECO's 2<sup>nd</sup> IRP Plan, HECO states that:

HECO will examine and, if prudent, develop the renewable energy technology through small-scale demonstration pilot projects or expand existing demonstration or pilot projects in situations where knowledge can be gained through hands-on experience. Cost-sharing, joint ventures, or other forms of partnerships (from Electric Power Research Institute, national laboratories, U.S. Department of Energy, renewable energy developers, other utilities, etc.) will be sought in these types of projects when it is appropriate.

In addition, HECO states that:

[The] qualitative benefits to HECO from the Fuel Cell Facility include:

- Access to personnel with direct experience with emerging fuel cell technology
- Advance the development of fuel cell technology to bring it closer to commercial availability
- Support the State of Hawaii's energy objective of reducing the import of petroleum fuel into Hawaii
- Access to a state-of-the-art fuel cell testing facility should the opportunity arise
- Further the working relationship with the partners (e.g., HNEI, UTC Fuel Cells [fka International Fuel Cell Corporation], Office of Naval Research) that will facilitate future projects to research, develop, or demonstrate renewable energy technologies

### III.

HRS § 269-19 requires the commission's approval of any lease or encumbrance of property that is "necessary and useful" for public utility purposes.<sup>2</sup>

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<sup>2</sup> HRS § 269-19 provides in relevant part:

No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder ... without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance ... made other than in accordance with the order of the commission shall be void.

Upon our review, the commission shares the same concerns of the Consumer Advocate regarding the benefits accruing to HECO's ratepayers resulting from the contributions that HECO will make for the Fuel Cell Facility. HECO has not been able to quantify the benefits that ratepayers will receive as a result of HECO's participation in, and support of, the Fuel Cell Facility. HECO has not been able to quantify the amount of contributions that it will make to support the construction and operation of the Fuel Cell Facility over the time that the Fuel Cell Facility will be in operation, nor has HECO been able to state with any degree of certainty the time period over which the contributions will be made. The commission does not presently know the level of costs associated with the Fuel Cell Facility that may be included in the revenue requirement of any future rate proceeding.

Notwithstanding the above concerns, we find that the License between HECO and HNEI is reasonable and in the public interest. In general, it appears that the terms and conditions of the License are reasonable for the following reasons.

First, HNEI is required to observe and comply with all laws, governmental rules, orders and ordinances and with standards adopted or recommended by any governmental authority having jurisdiction applicable to HNEI's use and possession of the licensed site. This requirement should serve to prevent any potential negative impact to HECO, its customers, and the general public resulting from any violation by HNEI of such laws, rules, regulations, orders, ordinances, and standards.

Second, the License contains broad indemnification and insurance requirements. These indemnification and insurance requirements will protect HECO, its customers, and the public in general from the risk caused by property damage, injuries to persons, or anything arising out of the construction or maintenance of the Fuel Cell Facility.

Third, the License is provided on a month-to-month basis and may be cancelled by either HECO or HNEI upon 30 days prior written notice. A month-to-month lease limits any adverse impact resulting from the Fuel Cell Facility.

Lastly, it does not appear that any provisions or terms of the License would result in discrimination against another party.

The commission also finds that the License is in the public interest because of the qualitative benefits to HECO from the Fuel Cell Facility which include: (1) access to personnel with direct experience with emerging fuel cell technology; (2) advancing the development of fuel cell technology to bring it closer to commercial availability; (3) supporting the State of Hawaii's energy objective of reducing the import of petroleum fuel into Hawaii; (4) access to a state-of-the-art fuel cell testing facility should the opportunity arise; and (5) furthering the working relationship with the partners that will facilitate future projects to research, develop, or demonstrate renewable energy technologies.

Accordingly, the License between HECO and HNEI for the Fuel Cell Facility should be approved.

The commission recognizes that HECO is not seeking approval to include any of the project expenses in a future test year revenue requirement in the instant application. Therefore, the commission will reserve the right to address the appropriateness of including any expenses associated with the Fuel Cell Facility in the test year requirement of HECO's next rate case proceeding. Moreover, in light of the above-mentioned concern, the commission will require HECO to provide the commission and the Consumer Advocate the following:

1. A status report on the Fuel Cell Facility within 60 days of the operational start-up of the Fuel Cell Facility, and annually on January 31 of each year of operation thereafter. The status report shall include a detailed description of the scope of the testing to be conducted at the Fuel Cell Facility. Also, the status report should include the expense incurred by HECO related to the Fuel Cell Facility and a description of the activity associated with the expense. Regardless of whether the report includes reporting on the R&D expense related to the Fuel Cell Facility, HECO should implement appropriate accounting procedures to clearly record and identify those expenses to facilitate regulatory review at a later time.
2. HECO shall provide a reasonable valuation of the market rental rate of the licensed area.

3. HECO shall notify the commission and Consumer Advocate if relocation of the Fuel Cell Facility is required and identify the party that will be responsible for any costs associated with such relocation.
4. HECO shall annually report on its efforts, activities, and planning, to assure that both it and the ratepayers directly benefit from expenditures for the Fuel Cell Facility, by defining its expected benefits and reporting the actual benefits to both HECO and the ratepayers.

#### IV.

##### THE COMMISSION ORDERS:

1. HECO's request for approval of the License to HNEI is approved.
2. A status report on the Fuel Cell Facility within 60 days of the operational start-up of the Fuel Cell Facility, and annually on January 31 of each year of operation thereafter. The status report shall include a detailed description of the scope of the testing to be conducted at the Fuel Cell Facility. Also, the status report should include the expense incurred by HECO related to the Fuel Cell Facility and a description of the activity associated with the expense. Regardless of whether the report includes reporting on the R&D expense related to the Fuel Cell Facility, HECO should implement appropriate accounting procedures to clearly record and identify those expenses to facilitate regulatory review at a later time.

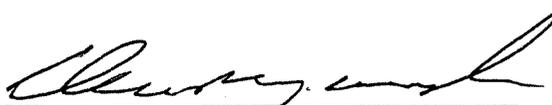
3. HECO shall provide a reasonable valuation of the market rental rate of the licensed area.

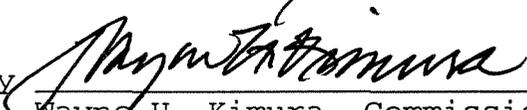
4. HECO shall notify the commission and Consumer Advocate if relocation of the Fuel Cell Facility is required and identify the party that will be responsible for any costs associated with such relocation.

5. HECO shall annually report on its efforts, activities, and planning, to assure that both it and the ratepayers directly benefit from expenditures for the Fuel Cell Facility, by defining its expected benefits and reporting the actual benefits to both HECO and the ratepayers.

DONE at Honolulu, Hawaii this 3rd day of June, 2002.

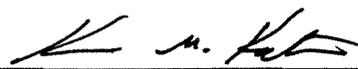
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Dennis R. Yamada, Chairman

By   
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

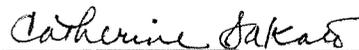
  
Kevin M. Katsura  
Commission Counsel  
01-0480.ac

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 19398 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

WILLIAM A. BONNET  
VICE PRESIDENT  
GOVERNMENT AND COMMUNITY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, HI 96840-0001

  
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Catherine Sakato

DATED: June 3, 2002