

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
HAWAIIAN ELECTRIC COMPANY, INC.)
)
For Approval of Projects Proposed to)
be Financed Through the Sale of)
Special Purpose Revenue Bonds and)
Certification that the Projects are)
for the Local Furnishing of Electric)
Energy, and Approval of the Issuance)
of Special Purpose Revenue Bonds and)
Related Notes and Guarantee, and)
Approval to Enter into Related)
Agreements and to Use Expedited)
Approval Procedure.)
_____)

DOCKET NO. 99-0120

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DIV. OF CONSUMER AFFAIRS
DEPT. OF LAND & NATURAL RESOURCES
GOVERNMENT BUILDING
STATE OF HAWAII

DECISION AND ORDER NO. 19525

Filed August 15, 2002
At 11:30 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

OF THE STATE OF HAWAII

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)

DECISION AND ORDER

I.

By a motion filed on May 17, 2002, HAWAIIAN ELECTRIC COMPANY, INC. (HECO or Applicant) requests that the commission: (1) approve the energy projects to be financed by borrowing the proceeds from the issuance and sale by the Department of Budget and Finance of the State of Hawaii (department) of special purpose revenue bonds (revenue bonds) and (2) certify that the energy projects listed in Exhibit 1 to its motion are "for the local furnishing of electricity," pursuant to HRS § 39A-191(2).

By a letter filed on May 17, 2002 (HECO's letter and motion hereinafter collectively referred to as motion), Applicant additionally requests that the commission grant it supplemental approval to participate in a sale of revenue bonds. Applicant makes its requests pursuant to Hawaii Revised Statutes (HRS) § 269-17, Hawaii Administrative Rules (HAR) title 6, chapter 61, subchapter 9, and Decision and Order No. 17253, filed on September 27, 1999, in this docket (Decision and Order No. 17253).

Applicant served copies of the motion on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate). On August 7, 2002, the Consumer Advocate filed a letter informing the commission that it does not object to the commission granting the relief requested in the motion.¹

¹In its August 7, 2002 letter, The Consumer Advocate recommended that the commission "consider requiring HECO to exclude any projects related to the Kewalo to Kamoku 138 kV transmission line, especially costs related to the Kamoku substation, from the projects that may be partially or fully funded by the proceeds from the issuance of Revenue Bonds." However, after a discussion with HECO on the matter, the Consumer Advocate agreed in an August 9, 2002 letter filed with the commission, that it "no longer recommends excluding the Kamoku Substation Transformer from the supplemental list of projects permitted to be financed by borrowing proceeds from the issuance and sale of revenue bonds under Act 262."

II.

A. Applicant

Applicant is a Hawaii corporation and is an operating public utility engaged in the production, purchase, transmission, distribution, and sale of electric energy for domestic, commercial, industrial, agricultural, and governmental purposes on the island of Oahu.

B. Background

By Act 262, 1998 Session Laws of Hawaii (Act 262), the 1998 legislature authorized the department to issue up to \$100,000,000 in principal amount of revenue bonds in one or more series. The revenue bonds may be issued from the effective date of the Act (July 20, 1998) through December 31, 2003 for projects for the local furnishing of electric energy.

Act 262 specifically authorized the following:

1. For HECO, \$75,000,000 for:

multi-project capital improvement program, including the acquisition of land, facilities used to produce electricity, transmission and distribution facilities, and other electric systems and facilities, or any combination thereof; and

2. For Hawaii Electric Light Company, Inc. (HELCO), \$25,000,0000 for:

multi-project capital improvement program, including the acquisition of land, facilities used to produce electricity (including two new fossil fuel generating units on the island of Hawaii), transmission and distribution

facilities, and other electric systems and facilities, or any combination thereof;

(provided that, of the amount authorized for HECO, none shall be used to fund the installation of a 138 kV line between the Kamoku Substation and the Pukele Substation ... and provided further that, of the amount authorized, none shall be used for nuclear fuel generating units).

By Decision and Order No. 17253, the commission, among other things, granted HECO and HELCO the authority to borrow from the department in one or more increments, up to a total of \$75,000,000 and \$25,000,000, respectively, representing the proceeds of the sale by the department from time to time of revenue bonds authorized by Act 262, within the parameters set forth in that decision and order.

In 1999, the department issued \$35,000,000 in revenue bonds on behalf of HECO under Act 262. Thus, \$40,000,000 remains in unused 1998 legislative authorization for HECO under which revenue bonds may be issued through December 31, 2003.

C. Applicant's Requests

As a prerequisite to participating in the revenue bond financing described in the motion, Applicant requests the following approvals and certification:

1. Approval to use the proceeds of revenue bonds issued under the remainder of the 1998

legislative authorization for additional projects, listed in HECO's Exhibit 1 to the motion (supplemental project list), that were not previously approved by the commission;

2. Certification that the projects listed in Applicant's supplemental project list are "for the local furnishing of electricity"; and
3. Supplemental approval to participate with the department in revenue bond financings of up to \$40,000,000, or the remaining amount of revenue bonds authorized by Act 262.

D. Benefits of Revenue Bond Financing

HECO states that it wishes to borrow the proceeds from sales of revenue bonds because such borrowings entail a lower interest cost than other forms of "equivalent" taxable debt. HECO contends that as a result of the interest savings that it derives from the borrowings, its costs of capital and revenue requirements are lower than they otherwise would be, thus representing an interest savings that is passed on to its customers in the form of lower electric rates. HECO estimates that despite the offset by other economic factors (such as the issuance costs and deferred taxes), they will benefit from a savings of approximately \$7,000,000 for the \$35,000,000 of bonds issued in November of 1999 over the 30-year life of the bonds.

III.

A. Project Approval

HECO attached a supplemental project list, which totals approximately \$150,000,000, to its motion that describes the energy projects in the multi-project capital improvement programs that it proposes to finance, in part, with the proceeds of the sale of revenue bonds issued pursuant to Act 262 and requests that the commission approve the projects pursuant to the Act. In its motion, HECO represents, through the testimony of its Manager of the Engineering Department, that none of the projects contained on the supplemental project list provides for the funding of either: (1) the installation of a 138 kV line between the Kamoku Substation and the Pukele Substation, or (2) nuclear fuel generating units.

Applicant's supplemental project list includes certain projects for which expenditures are expected to exceed \$500,000. Certain of the projects listed have already been approved by the commission pursuant to rule 2.3.g.2 of the commission's General Order No. 7, Standards of Electric Utility Service in the State of Hawaii (General Order No. 7). There are also certain projects listed for which applications pursuant to rule 2.3.g.2 of General Order No. 7 have yet to be filed. The project approvals being sought in this docket are separate and distinct from the approvals required by rule 2.3.g.2 of General Order No. 7. Applicant requests approval of energy projects in this docket pursuant to Act 262.

Applicant's supplemental project list also includes some above-ground transmission system projects that are subject to public hearings pursuant to HRS § 269-27.5. Applicant contends that the required public hearings are not a prerequisite to the commission's approval of projects proposed under Act 262 or HRS § 269-17.²

In addition, Applicant's supplemental project list includes certain transmission line projects that are subject to additional review under HRS § 269-27.6. Applicant requests approval of the energy projects in this docket pursuant to Act 262 and concedes that it must submit separate requests for such determination under separate applications.

We hold that for every proposed capital expenditure project in excess of \$500,000 listed in Applicant's supplemental project list, our review in this docket is limited to a determination of whether the project is for a purpose enumerated in HRS § 269-17. We further hold that every listed project in excess of \$500,000 must undergo separate commission review pursuant to rule 2.3.g.2 of General Order No. 7.

With respect to the above-ground transmission system projects listed on Applicant's supplemental project list, we hold that any approval of an above-ground transmission system project in this docket will not satisfy the public hearing requirement of HRS § 269-27.5 prior to construction of the

²In Decision and Order No. 17253, the commission reaffirmed its holding that public hearings conducted pursuant to HRS § 269-27.5 are not a prerequisite to the commission's review and approval of projects under Act 262 and HRS § 269-17.

transmission system. Additionally, we further hold that every above or below-ground transmission system project listed on Applicant's supplemental project list must undergo separate commission review pursuant to HRS § 269-27.6.

HRS § 269-17 provides, in pertinent part, that with the prior approval of the commission, a public utility may issue evidences of indebtedness for the acquisition of property, construction, completion, extension, improvement, or addition to facilities or service. Our approval must be predicated on a determination that the proposed purpose will not have a material adverse effect on a company's public utility operations.

The use of the proceeds of the revenue bonds for the capital projects described in Applicant's supplemental project list is a permissible purpose under the statute. Moreover, we find that the issuance of the bonds to finance the projects will not have a material adverse effect on Applicant's public utility operations.

We find that Applicant's participation in the proposed sale of revenue bonds in the of up to \$40,000,000 and Applicant's participation in the sale of the revenue bonds, as described in the motion, are reasonable and consistent with the provisions of HRS § 269-17. Accordingly, we conclude that the financing of those projects through the sale of revenue bonds should be approved.

B. Project Certification

Pursuant to HRS chapter 39A, part VI, the department may issue revenue bonds to finance the costs of "energy projects." HRS § 39A-191(2) defines "energy projects" as facilities for single projects or multi-project programs that are certified by the commission as being for the local furnishing of electric energy or gas. Applicants request that we certify that the projects listed in their project lists are for the local furnishing of electric energy.

Upon review of the projects listed in the supplemental project list, we find that all of the projects are facilities for the "local furnishing of electric energy," as that term is defined by HRS § 39A-191(3). Specifically, we find that the facilities consist of property and land that are or will be: (1) depreciable; (2) used to produce, collect, generate, transmit, store, distribute, or convey electric energy; (3) used in the trade or business of furnishing electric energy; and (4) part of the systems of HECO providing service to the general public of the city and county of Honolulu.

C. Supplemental Approval to Participate in the Sale of Revenue Bonds

The revenue bonds issued under Act 262 may be sold from time to time between our approval in this docket and December 31, 2003. Similar to the revenue bonds issued pursuant to Decision and Order No. 17253, the exact timing and amounts of

each series of revenue bonds will again be dependent on market conditions and the timing of Applicant's project expenditures.

Applicant requests that we approve the issuance by the department of the revenue bonds in an amount up to \$40,000,000. The issuance and sale of additional revenue bonds will be completed within the following parameters:

1. The revenue bonds will have a maximum aggregate principal amount of up to \$40,000,000, pursuant to the 1998 legislative authorization.
2. The revenue bonds will have a maturity date that is not more than 30 years from the date of issuance and not more than 120 per cent of the weighted average reasonably expected economic life of the projects to be financed with the proceeds of the revenue bonds, calculated in compliance with § 147(b) of the Internal Revenue Code.
3. The fixed interest rate at which the initial bonds will be issued will not exceed 7.5 per cent per annum, payable quarterly or semi-annually.
4. The price of the initial bonds will be not less than 95 per cent of the principal amount of the initial bonds.
5. The underwriting commission will not exceed two per cent of the principal amount of the revenue bonds.
6. The redemption provisions will be substantially as provided for in connection with the previous series of revenue bonds or refunding revenue bonds issued for the benefit of HECO, Maui Electric Company, Limited, and HELCO, except (a) if an optional redemption is permitted, the period which must elapse before an optional redemption may occur, and/or the redemption premium schedule or methodology, may be changed

and/or (b) if more than one series of revenue bonds is issued, the redemption provisions may vary as between each series of revenue bonds.

7. The covenants governing the revenue bonds will be substantially as provided for in other series of revenue bonds issued for the benefit of Applicant.
8. The series description will include the year of issuance and, if it appears that another series of revenue bonds or refunding revenue bonds may be issued in the same year, a letter indicating the sequence of issuance within that year (e.g., "2002A").

Upon review of the record, we find that the foregoing terms, conditions, and requests are reasonable and should be approved.

IV.

THE COMMISSION ORDERS:

1. The energy projects listed in Applicant's supplemental project list, attached to the motion, are approved pursuant to Act 262.

2. The energy projects listed in Applicant's supplemental project list, attached to the motion, are certified as being for the local furnishing of electric energy, in accordance with HRS § 39A-191(2).

3. HECO may, in its discretion, borrow from the department, or its trustees from time to time in one or more increments, up to a total of \$40,000,000, representing the proceeds of the sale by the department from time to time of

revenue bonds authorized by Act 262, within parameters set forth herein.

4. Applicant is authorized to use the proceeds from the sale or sales of the revenue bonds for the purposes set forth in the motion.

5. Applicant is granted such further relief as may be necessary or desirable in order to enable Applicant to carry out the revenue bond financings, described in the motion, provided that Applicant notifies the commission of the nature of such relief prior to taking any actions thereon.

6. Within 60 days of the issuance of any series of the revenue bonds, Applicant will provide the commission with the following information:

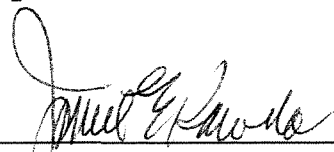
- A. A statement of the actual expenses incurred;
- B. A copy of the final official statement;
- C. A copy of the opinion of bond counsel to the effect that interest on the revenue bonds is exempt from federal and Hawaii income taxes under the laws and regulations in effect at the time the revenue bonds are issued (with certain limited exceptions);
- D. Copies of all final documents used in the revenue bond financing;
- E. All information required by HRS § 39A-208(b); and

F. If bond insurance is purchased, a report quantifying the savings achieved by the purchase of such insurance, together with Applicants' statement that the savings achieved by the purchase of such insurance outweighs the restrictions of any negative covenant required by the insurance, taking into account any costs associated with such purchase.

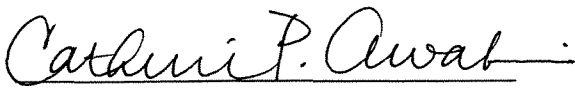
DONE at Honolulu, Hawaii this 15th day of August,
2002.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

99-0120.eh

CERTIFICATE OF SERVICE


I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 19525 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Catherine Sakato
Clerk

DATED: August 15, 2002