

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
HAWAIIAN ELECTRIC COMPANY, INC. )  
For Approval of a Pole Attachment )  
Agreement With AT&T Corp. for HITS )  
Contract. )

DOCKET NO. 02-0166

DECISION AND ORDER NO. 19719

2002 OCT 22 P 4: 26

RECEIVED

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At 8:00 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

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DECISION AND ORDER

I.

On June 25, 2002, HAWAIIAN ELECTRIC COMPANY, INC. (HECO) filed an application requesting commission approval of the Pole Attachment Agreement between HECO and AT&T Corp. (AT&T), dated June 4, 2002 (Agreement). HECO attached the Agreement to its application and designated it as Exhibit 1. The request was made pursuant to Hawaii Revised Statutes (HRS) § 269-19 and Hawaii Administrative Rules (HAR) § 6-80-78(a).<sup>1</sup>

HECO served two copies of the application on the DIVISION OF CONSUMER ADVOCACY of the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (Consumer Advocate). On September 4, 2002, the Consumer Advocate served HECO with information requests (IRs). On September 19, 2002, HECO filed its responses to the IRs.

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<sup>1</sup>HAR § 6-80-78(c) requires the commission to approve or reject an agreement concerning access to poles, ducts, conduits, and rights-of-way adopted voluntarily by negotiation within 90 days of the agreement's submission. The rule also states that if the commission fails to act within the prescribed time, the agreement is deemed approved.

By letter dated and filed on September 20, 2002, HECO voluntarily waived the requirement that the commission approves or rejects the Agreement within the 90-day review period, until October 23, 2002 (waiver).<sup>2</sup> By Order No. 19665, filed on September 20, 2002, the commission approved HECO's waiver and ordered the Consumer Advocate to file its statement of position by October 16, 2002.

On October 16, 2002, the Consumer Advocate filed its statement of position informing us that it does not object to the commission's approval of HECO's request.

## II.

HECO is a Hawaii corporation, and a public utility within the definition of HRS § 269-1 which engages in the production, purchase, transmission, distribution, and sale of electricity on the island of Oahu. AT&T is a foreign corporation authorized to conduct business in the State of Hawaii (State) with commission authority to provide telecommunications services in the State.

The Hawaii Information Transport System Agreement No. DCA300-97-D-002 (HITS contract) to provide enhanced information transfer capabilities to the Department of Defense and certain other authorized users in the State was awarded to AT&T. For AT&T to perform the HITS contract, it needs to install

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<sup>2</sup>HECO states that it submitted the waiver to allow the Consumer Advocate additional time to issue its statement of position and for the commission to make its decision.

outside plant copper and fiber optic cables at Schofield Barracks. Through the Agreement, HECO intends to grant AT&T a non-exclusive license to install the necessary copper and fiber optic cables on certain HECO 46kV subtransmission poles at Schofield Barracks. In exchange for the license, AT&T will pay HECO \$34.00 per year for each pole attachment. Under the Agreement, AT&T is also required to install; maintain; replace; and relocate, as required, the copper and fiber optic cables at its own costs. The other terms and conditions of the Agreement including, but not limited to, attachment procedures, insurance, and indemnity are set forth in the Agreement.

HECO represents that the revenues generated through the Agreement will be reported "above-the-line" which will benefit its customers. HECO further contends that the Agreement will not interfere with its ability to provide electric utility service.

### III.

The Agreement is a voluntarily negotiated agreement between HECO and AT&T for access to HECO's poles. HAR § 6-80-78 requires all agreements concerning access to poles, ducts, conduits, and rights-of-way adopted by negotiation or arbitration to be submitted to the commission for review and approval. Under this rule, the commission may only reject a negotiated agreement if we find that:

- (1) The agreement, or any portion of the agreement, discriminates against a telecommunications carrier not a party to the agreement; or

- (2) The implementation of the agreement, or any portion of the agreement, is not consistent with the public interest, convenience, and necessity.<sup>3</sup>

Our review indicates that the Agreement does not appear to discriminate against other telecommunications carriers, and that the implementation of the Amendment is consistent with the public interest, convenience, and necessity. Specifically, based on HECO's representations, the implementation of the Agreement among other things, should not: (1) interfere with HECO's ability to provide utility service; and (2) negatively impact HECO's ratepayers.<sup>4</sup> Thus, we find the Agreement to be reasonable and in accordance with HRS § 269-19 and HAR § 6-80-78.

The Consumer Advocate concurs with our assessment of the Agreement. Among other things, it specifically states that the terms and conditions of the Agreement seem reasonable and do not negatively impact HECO's services and customers. Consequently, the Consumer Advocate declares that it does not object to the commission's approval of HECO's application in this docket.<sup>5</sup>

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<sup>3</sup>HAR § 6-80-78(b).

<sup>4</sup>Additionally, as the Consumer Advocated noted, even though the \$34.00 annual pole attachment rate being charged AT&T is higher than the rates being charged some other carriers, since AT&T initially intends to only install 10 attachments, an annual charge of \$340.00 does not appear to be a significant expense for AT&T.

<sup>5</sup>The Consumer Advocate's recommendation is also based on: (1) the fact that revenues from the Agreement will benefit ratepayers since HECO intends to record them "above-the-line"; and (2) its reasoning that the need for the installation and construction of more poles in the area will be lessened since AT&T will be using HECO's poles.

Accordingly, the commission concludes that the Agreement, described in HECO's June 25, 2002 application, should be approved, and also concludes that this docket should be closed.

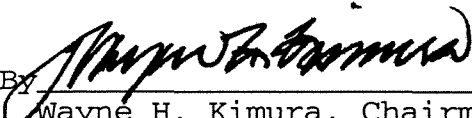
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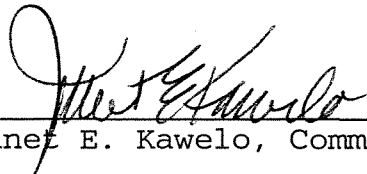
THE COMMISSION ORDERS:

1. The Agreement, described in HECO's June 25, 2002 application, is approved.
2. This docket is closed.

DONE at Honolulu, Hawaii this 22nd day of October, 2002.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Wayne H. Kimura, Chairman

By   
Janet E. Kawelo, Commissioner

By \_\_\_\_\_ (RECUSED)  
Gregg J. Kinkley, Commissioner

APPROVED AS TO FORM:

  
Ji Sook Kim  
Commission Counsel

02-0166.ah

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 19719 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, P.E.  
VICE PRESIDENT  
GOVERNMENT AND COMMUNITY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, HI 96840-0001

  
\_\_\_\_\_  
for Catherine Sakato

DATED: October 22, 2002