

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) Docket No. 04-0085
Agreement with the United States) Decision and Order No. 21073
Army for the Makua Valley Training)
Center.)
_____)

DECISION AND ORDER

I.

Background

This docket arises out HAWAIIAN ELECTRIC COMPANY, INC.'s ("HECO") initial request for expedited interim approval for the United States Army ("Army") to immediately and temporarily attach its fiber optic cable to three (3) HECO-owned poles located at the Army's Makua Valley Training Center ("MVTC") for a maximum period of approximately thirty-six (36) months.¹ On May 3, 2004, the commission approved HECO's request on an interim basis, subject to certain conditions, including the requirement that HECO file a formal application for approval on a permanent basis.²

¹HECO's letter, dated April 30, 2004.

²Interim Order No. 20958, filed on May 3, 2004. Given the interim approval, HECO estimates that the Army's fiber optic cable attachment will be completed by mid-June 2004. See HECO's status report, dated May 13, 2004.

On May 24, 2004, HECO filed its application seeking the commission's approval of a Pole Attachment Agreement with the Army, dated April 29, 2004 (the "Agreement"). HECO makes its request pursuant to Hawaii Revised Statutes ("HRS") § 269-19 and Hawaii Administrative Rules ("HAR") § 6-80-78(a).

HECO served copies of its application upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). The Consumer Advocate does not object to the commission's approval of HECO's application.³

II.

Pole Attachment Agreement

The Agreement grants to the Army a non-exclusive license to attach its fiber optic cable to HECO's three (3) 11.5 kilovolt transmission poles located near the Army's MVTC, commencing from the date of issuance of a final non-appealable order by the commission or a court of competent jurisdiction. The Agreement is subject to all necessary regulatory and governmental approvals, including the commission's approval.

The sole purpose of the Agreement is to provide emergency back-up telecommunications services to the MVTC, at any time during the term of the license. The Agreement, following the commission's approval, is intended to supersede the interim

³Consumer Advocate's position statement, filed on June 8, 2004.

approval granted by the commission. The Agreement includes the following terms and conditions:

1. The Army's use of HECO's poles shall not in any way interfere with HECO's utility operations.

2. The Army is responsible for all the costs associated with the installation and maintenance of the fiber optic cable, and shall install and maintain its equipment in compliance with all applicable laws and all engineering and technical standards.

3. The maximum duration of the license is four (4) years from the commencement date of the back-up emergency telecommunications services; provided that either the Army or HECO may terminate the Agreement, with or without cause, upon thirty (30) days' prior written notice to the other Party. HECO will charge: "A rental fee of \$400 for the use of the three poles for a period of four years. Negotiable beyond a period of 4 years."

4. Upon the Agreement's termination, the Army shall remove its fiber optic cable from HECO's poles.

HECO states:

1. Due to a series of failures in the Army's existing communications architecture at the MVTC, the Army made a request to temporarily attach fiber optic cable to three (3) HECO distribution poles near the MVTC.

2. "The fiber optic cable attachments are needed until a complete repair of the existing infrastructure can be

planned and programmed. The Army estimates that the temporary attachments will be required for approximately 36 months."⁴

3. "The Agreement will not interfere in any way with HECO's ability to provide electric utility service to the public."⁵

4. The Agreement is consistent with the public interest. The Army asserts that its fiber optic cable is critical for communications and safety. In addition, "[t]he Army's use of HECO's poles will limit the interruption of military training at MVTC that is vital to national security."⁶

HRS § 269-19 provides in relevant part that no public utility corporation shall lease, assign, 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, "without first having secured from the public utilities commission an order authorizing it so to do." Any such, lease, assignment, or encumbrance made in violation of HRS § 269-19 is rendered void.

HAR § 6-80-78(a), set forth in chapter 6-80, subchapter 7, provides that "[a]ll agreements concerning access to poles, ducts, conduits, and rights-of-way adopted by

⁴HECO's application, at 2.

⁵Id. at 5.

⁶Id. at 2.

negotiation or arbitration, . . . must be submitted to the commission for review and approval."⁷

The Consumer Advocate recommends approval of the Agreement, finding that:

1. The Agreement's duration is intended to provide the Army sufficient time to construct its own support structures to house the fiber optic cable crossing Farrington Highway to the MVTC.

2. The Agreement is consistent with 47 United States Code § 252(e) and HAR § 6-80-54(b).⁸ Specifically, the Agreement: (A) does not discriminate against other telecommunications carriers that are not parties to the Agreement; and (B) meets the Army's requirement for continuous operating communications services at the MVTC, "crucial for public safety, military exercises and national security purposes."⁹

The commission finds that the Agreement is reasonable and consistent with the public interest of ensuring the provision of emergency back-up telecommunications services to the Army's MVTC. Hence, the commission approves the Agreement.

⁷The scope of HAR chapter 6-80, subchapter 7, applies to public utilities that own or control poles, ducts, conduits, or rights-of-way used or usable, in whole or in part, for telecommunications services. HAR § 6-80-73.

⁸These identical provisions provide that the commission may reject an agreement governing access to telecommunications only if: (1) it discriminates against a telecommunications carrier that is not a party to the agreement; or (2) it is inconsistent with the public interest, convenience, and necessity.

⁹Consumer Advocate's position statement, at 4.

III.

Orders

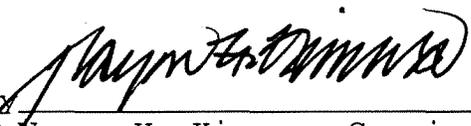
THE COMMISSION ORDERS:

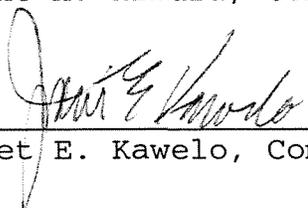
1. The Pole Attachment Agreement, dated April 29, 2004, between HECO and the Army, is approved.
2. This docket is closed.

DONE at Honolulu, Hawaii this 23rd day of June, 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:



Michael Azama
Commission Counsel

04-0085.sl1

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21073 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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Karen Higashi

DATED: June 23, 2004