

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
HAWAIIAN ELECTRIC COMPANY, INC. )  
For Approval to Waive HECO's )  
Rule 13 to Allow HECO to Pay for )  
a Portion of the Underground )  
Conversion Cost for Item P00000530, )  
the Ka Iwi Scenic Shoreline, )  
Phase 1, Increment 2, Project. )  
\_\_\_\_\_ )

DOCKET NO. 04-0130

DECISION AND ORDER NO. 21330

Filed Sept. 2, 2004  
At 9 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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K. Higashi

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Docket No. 04-0130

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DECISION AND ORDER

I.

Background

HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") requests a waiver of its Rule 13 tariff ("Rule 13"), thus allowing it to pay approximately \$64,923 to convert 12 kilovolt ("kV") overhead lines to 12 kV underground lines for the Ka Iwi Scenic Shoreline, Phase 1, Increment 2, Project (the "Project").<sup>1</sup>

HECO served copies of its application upon the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"). On July 28, 2004, HECO responded to the Consumer Advocate's information requests.

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<sup>1</sup>HECO's application, filed on May 28, 2004. HECO makes its request pursuant to its Tariff Sheet No. 1. See also Hawaii Revised Statutes ("HRS") §§ 269-16(b) and 269-12(b).

The Consumer Advocate does not object to the waiver of Rule 13.<sup>2</sup>

## II.

### HECO's Rule 13 and Tariff Sheet No. 1

HECO's Rule 13(D)(4) provides:

#### D. UNDERGROUND EXTENSIONS

\* \* \* \*

#### 4. Replacement of Overhead with Underground Facilities

When mutually agreed upon by the customer or applicant and [HECO], overhead facilities will be replaced with underground facilities, provided the customer or applicant requesting the change makes a contribution of the estimated cost installed of the underground facilities less the estimated net salvage of the overhead facilities removed.

HECO's Tariff Sheet No. 1 states:

The rules and rate schedules set forth herein have been fixed by order of the Public Utilities Commission of the State of Hawaii and may not be abandoned, changed, modified or departed from without the prior approval of the Commission.<sup>3</sup>

## III.

### The Project

The Project is initiated at the State of Hawaii ("State"), Department of Land and Natural Resources' ("DLNR") request, "in order to improve Kalaniana'ole Highway near Makapuu

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<sup>2</sup>Consumer Advocate's position statement, filed on August 17, 2004.

<sup>3</sup>See also HRS §§ 269-16(b) and 269-12(b).

Lookout."<sup>4</sup> The State plans to: (A) construct a new parking lot and lookout area; (B) reconstruct the lighthouse access road; and (C) widen Kalanianaʻole Highway to provide a bike lane and ingress and egress to the parking lot and lighthouse access road.

The existing facilities along Kalanianaʻole Highway consist of: (A) nine (9) wood poles, ranging from thirty-five (35) feet to forty-five (45) feet in height, and seven (7) associated anchors; (B) approximately 460 circuit feet of 12 kV and associated secondary overhead conductors; (C) approximately 990 circuit feet of 12 kV and associated secondary overhead conductors; (D) one (1) single-phase pole mounted transformer; (E) two (2) single-phase 12 kV risers; and (F) one (1) 12 kV group operated switch.

HECO proposes to underground the existing overhead lines currently located on the makai side of Kalanianaʻole Highway, as part of the Project. The 12 kV underground work will consist of installing:

1. One (1) handhole and five (5) manholes.
2. Approximately 110 feet of 2-5 inch ducts, 465 feet of 2-5 inch and 2-4 inch ducts, 350 feet of 2-2 inch ducts, and 875 feet of 2-4 inch ducts.
3. Approximately 775 circuit feet of 12 kV cables and 4,390 circuit feet of other 12 kV cables.
4. Two (2) three (3)-phase and two (2) single-phase 12 kV risers.

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<sup>4</sup>HECO's application, at 2.

IV.

HRS §§ 264-33 and 264-33.5

HRS chapter 264 governs public highways in the State.

HRS § 264-1. Public highways consist of: (1) State highways under the State Department of Transportation's ("DOT") jurisdiction; and (2) County highways, "which are all other public highways." HRS § 264-1(a).

HRS §§ 264-33 and 264-33.5 provide in respective part:

**§264-33 Relocation of utility facilities.**

(a) Whenever, as a result of the work of construction, reconstruction, or maintenance of any state highway or state or county federal-aid highway, it is necessary to provide for or require the removal, relocation, replacement, or reconstruction of any utility facility, and the expense of removal, relocation, replacement, or reconstruction exceeds \$10,000, one-half of this excess expense shall be a proper charge against the state or county funds available for the construction or maintenance of state or county highways; provided that all of the expense of removal, relocation, replacement, or reconstruction of publicly owned utility facilities shall be a charge against the state or county funds.

(c) The amount to be paid out of state or county funds shall be computed as follows:

- (1) The total cost shall first be determined.
- (2) From the total cost there shall be deducted the following items:
  - (A) Depreciation, except that this shall not be applicable to publicly owned utility facilities, and the salvage value of any materials or parts salvageable and retained by the utility;
  - (B) The amount of any betterment to the utility facility resulting from the removal, relocation, replacement, or reconstruction;
  - (C) In the case of a privately owned utility facility only, the first \$10,000 of the expense of such work;

- (D) The balance of the cost, in the case of a privately owned utility facility only, shall be paid one-half by the owner thereof, and the remaining one-half shall be the amount payable out of state or county funds.

**§264-33.5 Underground installation of utility facilities along federal-aid highways; when required; when waived.** (a) The director of transportation shall arrange for the installation of all utility cables and facilities below the ground, within a berm or away from the alignment of a highway, during the design or redesign and construction or reconstruction phases of any new or existing federal-aid highway project, when a determination is made that federal highway funds are available to pay for the federal share of the cost differential between underground and overhead facilities.

Kalaniana'ole Highway is a State highway subject to the DOT's jurisdiction.

V.

HECO's Request for Waiver

HECO explains that:

1. The Project's scope of work and the cost sharing arrangement are memorialized in a Utility Agreement, dated January 21, 2004, between HECO and the State.<sup>5</sup> The Utility Agreement is expressly contingent upon the commission's approval.
2. The Project's estimated cost is \$420,802. Of this amount, DLNR will contribute approximately \$355,879 in cash and in-kind contributions-in-aid-of-construction ("CIAC"), including

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<sup>5</sup>The cost sharing formula is set forth in a document attached to the Utility Agreement, entitled "Utility Cost Estimate," dated July 12, 2003.

contributions for change-over and removal costs.<sup>6</sup> HECO seeks the commission's approval to contribute the remaining balance, \$64,923.

3. The Project's cost sharing is based on HRS §§ 264-33, 264-33.5, and negotiations between HECO and the State. Specifically, "[t]he cost sharing for the overhead to underground conversion is based on a 50/50 cost sharing, subject to certain deductions, of an overhead to overhead relocation, and a 90% State and 10% HECO cost sharing, subject to certain deductions, of an overhead to underground relocation."<sup>7</sup> The State's ninety (90) per cent share "will actually be shared 80% by the Federal Government and 10% by the State."<sup>8</sup>

In support of its request to waive Rule 13, HECO asserts that:

1. "A project-specific waiver of Rule 13 is required for HECO to pay a portion of the cost to convert the existing

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<sup>6</sup>HECO states that the change-over and removal are non-capital items that are not included in its capital cost estimates provided to the commission. However, change-over and removal costs are included in the cost sharing between DLNR and HECO.

Approximately \$110,380 represents the cash CIAC, while \$245,499 represents the in-kind CIAC. See paragraph 4 of the Utility Agreement; and the "Utility Cost Estimate," dated July 12, 2003. See also the Consumer Advocate's position statement, at 5.

<sup>7</sup>HECO's application, at 4 (brackets removed from the original text).

<sup>8</sup>Id. at 4, footnote 3.

12 kV overhead lines to 12 kV underground lines. The State will pay the remaining 90% of this conversion."<sup>9</sup>

2. Its cost sharing with the State, in this instance: (A) is consistent with its modified Policy on Underground Lines ("Modified Policy");<sup>10</sup> (B) represents a reasonable solution for converting the existing 12 kV lines from overhead to underground; and (C) is consistent with the State Legislature's "clearly expressed concern that the community's desire for underground utility facilities be facilitated, if and to the extent that can be done at a reasonable cost."<sup>11</sup>

In the event the commission waives Rule 13, the construction of HECO's facilities is expected to commence in September 2004, with completion by November 2004. HECO cautions that the Project's scope of work "may be modified due to design modifications initiated by the State or further design refinements by HECO."<sup>12</sup> Hence, the Project's final cost sharing arrangement will be based on the actual costs incurred.<sup>13</sup>

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<sup>9</sup>Id. at 4 - 5.

<sup>10</sup>A copy of HECO's Modified Policy is attached as Exhibit III to its application. As applicable to this Project, HECO's Modified Policy, dated February 22, 2002, states in part that HECO will convert existing overhead lines to underground lines:

[w]here federal highway funds are available for the undergrounding of lines as part of a state or county highway project pursuant to HRS § 264-33.5 and there is cost-sharing for HECO's portion of the project according to the following formula: 80% -- federal, 10% -- HECO, and 10% -- state or county funds[.]

<sup>11</sup>HECO's application, at 5.

<sup>12</sup>Id. at 3.

<sup>13</sup>See HECO's responses to CA-IR-6 and CA-IR-9(b).

## VI.

### Consumer Advocate's Position

At the outset, the Consumer Advocate notes:

1. "HECO seeks a waiver of its Rule 13 because [it] intends to accept responsibility for a portion of the costs incurred to convert the existing overhead lines to underground facilities."<sup>14</sup>

2. Rule 13(D)(4) reflects HECO's previous Policy that "DLNR should be responsible for the additional costs incurred to relocate the existing overhead lines to underground facilities."<sup>15</sup>

3. HECO's current Modified Policy states that HECO will convert existing overhead lines to underground lines:

[w]here federal highway funds are available for the undergrounding of lines as part of a state or county highway project pursuant to HRS § 264-33.5 and there is cost-sharing for HECO's portion of the project according to the following formula: 80% -- federal, 10% -- HECO, and 10% -- state or county funds[.]<sup>16</sup>

4. HECO's Modified Policy is in response to the community's and State Legislature's preference to underground overhead utility facilities. Thus, where federal highway funds are available, HECO intends to share in the costs of placing overhead utility lines in underground facilities.

5. HECO's Modified Policy will effectively increase its rate base and require HECO's customers to pay for the costs of facilities that are intended to benefit a specific customer.

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<sup>14</sup>Consumer Advocate's position statement, at 3.

<sup>15</sup>Id.

<sup>16</sup>See footnote 10, above.

As a result, HECO is required to obtain a waiver of its Rule 13(D)(4) whenever it seeks to implement its Modified Policy.

The Consumer Advocate then examined the distribution of the Project's cost between the Federal Government, State, and HECO, as follows:

Federal/State:	\$355,878.60
HECO:	<u>\$ 64,923.40</u>
Total:	\$420,802 <sup>17</sup>

The Consumer Advocate concludes:

1. Pursuant to the Utility Agreement, the Project's cost will be shared in accordance with HRS §§ 264-33(c)(2)(C) and 264-33.5.

2. The cost sharing amounts reflect adjustments from the 80-10-10 split set forth in HECO's Modified Policy, consistent with HRS §§ 264-33(c)(2)(C) and 264-33.5.

3. It appears that HECO has properly allocated the Project's cost in accordance with its Modified Policy, as adjusted by HRS §§ 264-33(c)(2)(C) and 264-33.5.

Accordingly, the Consumer Advocate does not object to the commission's waiver of Rule 13.<sup>18</sup>

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<sup>17</sup>See the "Utility Cost Estimate," dated July 12, 2003.

<sup>18</sup>That said, the Consumer Advocate reiterates its overall concern with the effectiveness of HECO's Modified Policy in addressing the community's and State Legislature's "policy issues of trying to place utility facilities underground, . . . [and] who bears [the] responsibility for the costs of placing utility lines in underground facilities[.]" Consumer Advocate's position statement, at 6. See also Docket No. 03-0036, *In re HECO (Kailua Road Underground Conversion Project)*.

## VII.

### Discussion

The Project, initiated at DLNR's request, is intended to beautify and improve the Kalanianaʻole Highway area near the Makapuu Lookout, for the community's safety and benefit. The Federal and State Governments, combined, will fund a majority of the Project's cost, with most of the monies consisting of federal highway aid funds. The remaining amount, of which HECO proposes to pay, appears consistent with its Modified Policy, as adjusted by HRS §§ 264-33(c)(2)(C) and 264-33.5.<sup>19</sup>

The commission, in this instance, waives Rule 13(D)(4). HECO, thus, may contribute up to \$64,923 for the Project's cost.<sup>20</sup>

## VIII.

### Order

THE COMMISSION ORDERS that HECO's request to waive its Rule 13(D)(4) is approved. HECO may contribute up to \$64,923 to convert 12 kV overhead lines to 12 kV underground lines for the Ka Iwi Scenic Shoreline, Phase 1, Increment 2, Project.


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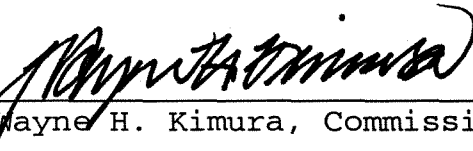
<sup>19</sup>See the "Utility Cost Estimate," dated July 12, 2003.

<sup>20</sup>Concomitantly, the commission makes it clear that HECO will not be allowed to recover from ratepayers HECO's contributions to the Project's cost, unless approval for such recovery is granted by the commission in a general rate increase proceeding. Since the commission does not guarantee the approval of such recovery, HECO may ultimately end up absorbing any loss of revenues associated with this cost sharing arrangement.

DONE at Honolulu, Hawaii SEP 02 2004.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

By (RECUSED)  
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

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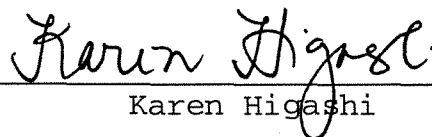
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21330 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: SEP 02 2004