

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN ELECTRIC COMPANY, INC.,)
HAWAII ELECTRIC LIGHT COMPANY, INC.)
and MAUI ELECTRIC COMPANY, LIMITED)
For the Approval of the Issuance of)
Refunding Special Purpose Revenue)
Bonds and Related Notes and)
Guarantees, and Authorization to)
Enter into Related Agreements.)
_____)

DOCKET NO. 04-0303

DECISION AND ORDER NO. 21497

RECEIVED
2004 DEC 20 A 8:17
DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed Dec. 17, 2004
At 2:30 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

K. Higashi

B.

Applicants' Request

HECO, HELCO, and MECO (collectively, "Companies" or "Applicants") request the commission's approval to participate in one (1) or more sales of refunding special purpose revenue bonds ("RSPRBs") for their benefit and at their individual discretion, in the aggregate principal amount of up to \$47 million.¹ Applicants make their joint request pursuant to Hawaii Revised Statutes ("HRS") § 269-17 and Hawaii Administrative Rules ("HAR") chapter 6-61, subchapter 9.

Applicants served copies of their Joint Application upon the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). On November 17, 2004, the commission issued Order No. 21467, directing the Applicants and the Consumer Advocate meet to formulate the issues, procedures, and schedule with respect to this proceeding, to be set forth in stipulated procedural order. In lieu of filing a stipulated procedural order, on December 8, 2004, the Consumer Advocate filed its Statement of Position, indicating that it does not object to the approval of the Joint Application.²

¹Joint Application, Verification, Exhibits, and Certificate of Service (collectively, the "Joint Application"), filed on October 15, 2004.

²The commission thus finds that its directive for a stipulated procedural schedule is moot. Consequently, Order No. 21467 should be voided.

II.

Refunding Special Purpose Revenue Bonds

A.

Refinancing of the Series 1995A Bonds

In January 1995, the State of Hawaii ("State"), Department of Budget and Finance, issued \$47 million of fixed rate revenue bonds, i.e., the Series 1995A Bonds, for Applicants' benefit. The Series 1995A Bonds are subject to redemption in whole or in part, on or after January 1, 2005.

For the Series 1995A Bonds: (1) the initial redemption price is 101 per cent of the principal amount of the bonds, plus accrued interest to the redemption date; (2) the redemption prices declined to a redemption price of 100 per cent on or after January 1, 2006; and (3) the current interest rate is 6.6 per cent.³

If financial market conditions remain favorable, Applicants propose to sell up to \$47 million of the RSPRBs in one (1) or more series, within the parameters proposed in the Joint Application. The proceeds from the sale will be used, as applicable, to redeem, in whole or in part, the Series 1995A Bonds (the "Refinancing"), on or after January 1, 2005.⁴

Pages 10 - 16 of the Joint Application describe the procedures, principal participants, financing documents and other agreements involved in the Refinancing.

³See id. at 7 - 8.

⁴Act 228, 1992 Session Laws of Hawaii, authorized the issuance of the Series 1995A Bonds and RSPRBs.

In general, the Refinancing will include:

1. The sale of the RSPRBs in one (1) or more sales and series, the use of the sales proceeds to repay, in whole or in part, the notes issued in connection with the Series 1995A Bonds, and the redemption of the Series 1995A Bonds that are to be refunded.

2. The involvement of Applicants, the State Department of Budget and Finance, underwriters, the bond trustee, and if bond insurance is procured, bond insurer and bond counsel.

3. Financing and other documents, including the preliminary and final official statements, loan, bond purchase and insurance agreements, notes, trust indenture, and the bond insurance policy.

Applicants state that the RSPRBs are expected to be sold through one (1) or more negotiated public offerings.

Applicants request commission approval of the Refinancing as soon as possible in order to take advantage of the favorable financial market conditions. Conversely, if market conditions are not favorable, Applicants propose to defer the Refinancing, at their option, to a later date.

B.

Loan Agreements

Applicants state that, for the RSPRBs:

1. They intend to enter into one (1) or more loan agreements with the State Department of Budget and Finance, as provided for in HRS § 39A-195.

2. Subject to certain changes in connection with the Refinancing, each loan agreement is expected to be in substantially the same form as the loan agreements entered into by HECO, HELCO, or MECO in the sales of revenue bonds and refunding special purpose revenue bonds that were previously reviewed by the commission in other dockets.⁵

3. The obligations of HELCO and MECO under any loan agreement to which each is a party, each respective note, and any related agreements, "will probably be guaranteed by HECO, as were the obligations of HELCO and MECO in connection with the issuance of" the Series 1995A Bonds.⁶ They anticipate that HECO's guarantees will be in substantially the same form as the guarantees set forth in the loan agreements filed in past commission financing and refinancing dockets involving Applicants.

C.

Bond Insurance and Negative Covenant

Applicants request the commission's approval to:

1. Purchase bond insurance for one (1) or more series of the RSPRBs, if in Applicants' judgment, the procuring of such insurance will result in net cost savings, after taking into account the insurance premiums that must be paid by Applicants to obtain the insurance.

⁵See Docket Nos. 6333, 6554, 6797, 7624, 95-0096, 97-0351, 99-0060, 99-0120, 00-0120, 03-0045.

⁶Joint Application at 16.

2. Enter into negative covenant agreements if bond insurance is purchased and the bond insurer requires negative covenants.

The negative covenants will provide that, "without the consent of the bond insurer (which consent may not be unreasonably withheld), HECO and its subsidiaries will not issue first mortgage bonds or similar secured debt, without equally and ratably securing the debt to be insured by the bond insurer or other outstanding bonds insured by the bond insurer, with exceptions and limitations which are the same or in substance similar to those included in the negative covenants previously entered into by HECO."⁷

In considering bond insurance, Applicants intend to weigh the overall financial savings of purchasing the insurance against the restrictions of the related negative covenant. If, in Applicants' judgment, "the savings that will be realized by issuing bond insurance outweigh the restrictions, and if the related sale can be concluded on a timely basis with the purchase of bond insurance, then the Companies request the flexibility to purchase bond insurance and enter into a related negative covenant."⁸

⁷Id. at 19.

⁸Id. at 20.

D.

Parameters

Applicants request that the commission approve the following parameters within which the RSPRBs, and related notes, may be issued:

Designation: Each series of RSPRBs shall include in its designation the year of issuance (e.g. 2004) any, if HECO, HELCO, and/or MECO anticipate issuing more than one (1) series of special purpose revenue bonds or refunding special purpose revenue bonds in that year, a letter designating the particular series (e.g., "Refunding Series 2004A").

Aggregate Principal Amount: Up to \$47 million, as follows:

HECO: Up to \$40 million
HELCO: Up to \$5 million
MECO: Up to \$2 million.

Maturity: Such date for each series of RSPRBs which is not more than 120 per cent of the remaining weighted average reasonably expected economic life of the projects originally financed with the proceeds of the bonds being refunded by such series of RSPRBs, calculated in compliance with Section 147(b) of the Internal Revenue Code.

Interest Rate: Fixed interest rate not to exceed 5.75 per cent.

Price: Not less than 95 per cent of the principal amount of the RSPRBs.

Underwriting Commission: Up to 2 per cent of the principal amount of the RSPRBs.

Redemption Provisions: Substantially as provided for in connection with previous series of special purpose revenues bonds or refunding special purpose revenue bonds issued for the benefit of HECO, HELCO, and/or MECO, including mandatory

redemption provisions of the types previously requested by certain bond insurers, 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 (1) series of RSPRBs is issued in connection with the Series 1995A Refinancing, including more than one (1) series of RSPRBs to effect the redemption, the redemption provisions may vary as between each series of RSPRBs.

Covenants: Substantially as provided for in previous series of special purpose revenue bonds or refunding special purpose revenue bonds issued for the benefit of HECO, HELCO, and/or MECO.

Joint Application at 16 - 18.

E.

Issuance Costs

The estimated consolidated issuance costs of the Refinancing are discussed in Exhibit A of the Joint Application. The maximum estimated consolidated issuance cost is \$2.1 million.

F.

Estimated Savings

The Joint Application includes a calculation of the estimated savings of the Refinancing at pages 7 - 9.

At the fixed interest rate of five (5) per cent, with the purchase of insurance, Applicants estimate an annual net savings of approximately \$640,000 after the first year, or about \$12.5 million in total savings over the lives of the RSPRBs.

Applicants explain that the resulting savings will lower their embedded cost of debt, which: (1) is part of their respective costs of capital; and (2) determines their rates of return on rate base.

G.

Reporting

Applicants state that they will report to the commission:

1. The results of the Refinancing as soon as practicable after it is completed (the "Refinancing Report"). Said report will include a: (A) statement of the actual expenses incurred; (B) copy of the final official statement; and (C) copy of the bond counsel's opinion that the interest on the refunding revenue bonds is exempt from federal and State income taxation.

2. Within sixty (60) days after each sale of the RSPRBs, the information required by HRS § 39A-208(b) (the "HRS § 39A-208(b) Report").

3. Information relating to each sale of RSPRBs annually, by each May 1 beginning in the year after the bonds are issued, pursuant to Act 228, 1992 Session Laws of Hawaii (the "Annual Report").

In addition, if requested, Applicants will provide to the commission a copy of the principal financing documents and other final documents used in the Refinancing.

III.

Consumer Advocate's Position

The Consumer Advocate notes that in Decision and Order No. 12651, filed on October 6, 1993, in Docket Nos. 7624 and 6797, the commission determined that the monies received from the Series 1995A Bonds would be used for the purposes set forth in HRS § 269-17. In Decision and Order No. 12651, the commission ascertained that the projects to be financed with the proceeds of the revenue bonds were for the provision of electric service, consistent with the requirements of Act 228, 1992 Hawaii Session Laws. Accordingly, the Consumer Advocate notes that it "appears that the [r]efinancing complies with the requirements of HRS § 269-17." The Consumer Advocate further notes that since the Applicants advise that the "request in the instant proceeding is merely to replace existing debt with less expensive debt" it will not oppose the requested waiver of the requirements of HAR § 6-61-101(b)(1), (b)(5), (b)(6), and (b)(7).

The Consumer Advocate concludes by stating that it "understands that Applicants will not issue new debt if certain interest rate parameters are not met and the assumed savings cannot be realized." Thus, the Consumer Advocate does not object to the approval of the relief described in greater detail in Section IX, pages 23 to 26 of the Joint Application, but recommends that the Applicants provide the commission and the Consumer Advocate with a copy of the following documents: (1) the statement of the actual expenses incurred by the Companies; (2) the final official statement; and (3) if the bond insurance

is purchased, a copy of the analysis demonstrating that the purchase of the bond insurance would be cost effective and result in savings to the Applicants. We find the Consumer Advocate's recommendations to be reasonable. We note that the Applicants intend to provide the first two documents within the Refinancing Report.⁹ Thus, in addition to the reporting requirements set forth in Section II.G., we will also request that the Applicants provide the commission and the Consumer Advocate with a report demonstrating that the purchase of the bond insurance would be cost effective and result in savings to the Applicants, if the Applicants opt to purchase bond insurance (the "Result in Savings Report").

IV.

Commission's Review

HRS § 269-17 provides that, upon the commission's prior approval, a public utility corporation may issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve (12) months after the date thereof, for the following purposes, and no other:

for the acquisition of property or for the construction, completion, extension, or improvement of or addition to its facilities or service, or for the discharge or lawful refunding of its obligations or for the reimbursement of moneys actually expended from income or from any other moneys in its treasury not secured by or obtained from the issue of its stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, for any of the aforesaid purposes except maintenance of service, replacements, and

⁹See supra Section II.G.

substitutions not constituting capital expenditure in cases where the corporation has kept its accounts for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which the expenditures were made, and the sources of the funds in its treasury applied to the expenditures.

In approving an application to issue indebtedness under HRS § 269-17, the commission must find that the proposed purpose for the issuance will not have an adverse effect on the public utility's operations.¹⁰ "All stock and every stock certificate, and every bond, note, or other evidence of indebtedness of a public utility corporation not payable within twelve months, issued without an order of the commission authorizing the same, then in effect, shall be void." HRS § 269-17.

The present docket involves the refinancing of the Series 1995A Bonds at favorable interest rates, in the event the present financial market conditions prevail. There is no evidence in the docket record to suggest that the proposed purposes for the issuance of the RSPRBs will have a material adverse effect on any of Applicants' public utility operations.

The commission approves Applicants' request for authorization to participate in the Refinancing, as set forth in Section VI, below.¹¹

¹⁰See Decision and Order No. 20803, filed on February 13, 2004, at 11 - 12, in Docket No. 03-0409; Amended Decision and Order No. 16728, filed on December 7, 1998, at 11, in Docket No. 98-0338; Amended Decision and Order No. 15356, filed on February 26, 1997, at 11, in Docket No. 96-0344; and HRS § 269-17.

¹¹Section VI of this Decision and Order corresponds with Applicants' requested Prayer for Relief described at pages 23 - 26 of their Joint Application.

V.

HAR § 6-61-101(b)

HAR § 6-61-101(b) mandates that Applicants submit certain exhibits with their Joint Application. Applicants request a waiver of paragraphs (1), (5), (6), and (7), subsection (b).¹² Applicants state that the RSPRBs will: (1) simply replace the existing debt with other less expensive debt; thus (2) it does not appear that the information with respect to which the waiver is requested is necessary in the commission's review of the Joint Application.

The commission finds good cause to waive the requirements of HAR § 6-61-101(b)(1), (5), (6), and (7), to the extent applicable.

VI.

Orders

THE COMMISSION ORDERS:

1. Order No. 21467, filed on November 17, 2004, in this docket is voided.

¹²HAR § 6-61-101(b)(1), (5), (6), and (7) require the following exhibits to be filed with an application for authority to issue stock and stock certificates or bonds, notes, leverage leases, and other evidences of indebtedness payable at periods of more than twelve (12) months after the date thereof:

(1) Financial statements in accordance with sections 6-61-75 and 6-61-76;

(5) Copy of source and application of funds statement for the latest year and for each of the succeeding five (5) years;

(6) Statement of capital structure for latest year and for each of the succeeding five (5) years, including notes payable as debt; and

(7) Statement showing interest coverage for the latest year and for each of the succeeding five (5) years.

2. HECO, HELCO, and MECO, in their discretion, are authorized to borrow from the State Department of Budget and Finance, or its trustee, up to a total of \$40 million, \$5 million, and \$2 million, respectively, representing proceeds from one (1) or more sales by said Department of the refunding special purpose revenue bonds authorized by Act 228, 1992 Session Laws of Hawaii, within the parameters described in the Joint Application.

3. HECO, HELCO, and MECO, in their discretion, are authorized to participate in the Refinancing (including a partial refinancing), provided that the terms of the refunding special purpose revenue bonds fall within the parameters described in the Joint Application.

4. HECO, HELCO, and MECO, are authorized to carry out the Refinancing (including a partial refinancing), either alone or combined in a single offering with: (A) one (1) or more series of non-refunding bonds; and/or (B) other refunding bonds.

5. The refunding special purpose revenue bonds are authorized to be sold in one (1) or more offerings and/or one (1) or more series, including one (1) or more series of refunding special purpose revenue bonds to effect the redemption (in whole or in part, from time to time) of a single series of Series 1995A Bonds.

6. HECO, HELCO, and MECO are authorized to enter into one (1) or more loan agreements covering borrowings in connection with the refunding special purpose revenue bonds (and providing for the payment by Applicants of all underwriting commissions and

other expenses of each contemplated financing), in substantially the same form previously used in connection with previous series of special purpose revenue bonds and refunding special purpose revenue bonds as described in Section II.B. above, with such changes as are necessary or desirable, including changes that may be necessary if it is determined to: (A) carry out the Refinancing in more than one (1) offering; (B) combine the Refinancing (or a portion thereof) in one (1) or more offering of one (1) or more series of refunding special purpose revenue bonds, non-refunding bonds, and/or other special purpose revenue bonds; (C) carry out a partial refinancing; and/or (D) modify the final terms of any bond insurance arrangements.

7. HECO, HELCO, and MECO, in their discretion, are authorized to issue respective notes to the State Department of Budget and Finance, or its trustee, in the aggregate amounts of up to \$40 million, \$5 million, and \$2 million, respectively, in connection with the borrowings by Applicants of the proceeds from the sale (or sales) of the refunding special purpose revenue bonds by said Department (such notes in total to correspond in principal amount, interest rate, maturity, and redemption provisions to the related refunding special purpose revenue bonds).

8. HECO, HELCO, and MECO, in their discretion, are authorized to execute and deliver any and all financing documents that are necessary or desirable in order to conclude the Refinancing.

9. HECO, in its discretion, in connection with the borrowings by HELCO and MECO from the State Department of Budget and Finance or its trustee of a portion of the proceeds of the refunding special purpose revenue bonds, is authorized to guarantee the obligations of HELCO and MECO under the loan agreements and respective notes.

10. Applicants are authorized to purchase bond insurance for one (1) or more series of refunding special purpose revenue bonds, and to pay the related insurance premiums: (A) if the sale or sales of said bonds can be concluded on a timely basis with the purchase of insurance; and (B) if in Applicants' judgment the purchase of bond insurance is desirable, taking into consideration the net cost savings (after taking into account the insurance premiums that must be paid by Applicants to obtain such insurance) weighed against the disadvantages of any required negative covenant or other restrictive provisions (such as the restriction on corporate reorganizations included as a mandatory redemption event for the Series 2002A, Series 2003A, and Series 2003B revenue bonds).

11. In the event any of the refunding special purpose revenue bonds are to be insured, Applicants are authorized to enter into any insurance agreements or other agreements that may be required to obtain such insurance, and to include such terms in the financing documents as may be required by the bond insurers or as otherwise may be necessary or desirable to complete the related sale (or sales) of said bonds on an insured basis.

12. HECO is authorized to enter into one (1) or more negative covenant agreements with the bond insurer in connection with each series of refunding special purpose revenue bonds, should bond insurance be purchased and a negative covenant required, which will in substance provide that, without the consent of the bond insurer (which consent may not be unreasonably withheld), HECO and its subsidiaries will not issue first mortgage bonds or other secured debt without equally and ratably securing the bonds to be insured by the bond insurer and other outstanding bonds insured by the bond insurer, with exceptions and limitations which are the same or in substance similar to those included in the negative covenants entered into by HECO in connection with previous series of revenue bonds and refunding revenue bonds.

13. Applicants are authorized to use the proceeds of the Refinancing for the purposes set forth in the Joint Application.

14. The filing requirements set forth in HAR § 6-61-101(b)(1), (5), (6), and (7), to the extent applicable, are waived.

15. Applicants shall file with the commission the reports described in Section II.G. and III., above (the Refinancing Report, HRS § 39A-208(b) Report, Annual Report, and, if applicable, the Result in Savings Report), with two (2) copies served upon the Consumer Advocate; provided that, unless ordered otherwise, the filing of the principal financing documents and other final documents used in the Refinancing is not required.

16. Subject to the actions that are discretionary, Applicants shall conform to all of the commission's orders set forth above. Their failure to adhere to the commission's orders shall constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by law.

DONE at Honolulu, Hawaii DEC 17 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

By (EXCUSED)
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Catherine P. Awakuni
Catherine P. Awakuni
Commission Counsel

04-0303.cs

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21497 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

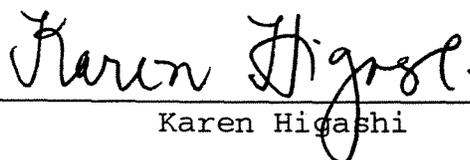
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DATED: DEC 17 2004