

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 MAUI ELECTRIC COMPANY, LIMITED)
)
 For Approval to Construct a 69kV)
 Overhead Transmission Line Pursuant)
 To HRS Section 269-27.5 for Project)
 M0000697, Waikapu 69kV Line)
 Relocation, Relocation of an)
 Existing Overhead Transmission)
 System.)
 _____)

Docket No. 2006-0157

Decision and Order No. 22991

DECISION AND ORDER

By this Decision and Order, the commission approves MAUI ELECTRIC COMPANY, LIMITED's ("MECO") proposal to relocate an existing sixty-nine kilovolt ("69kV") transmission line above the surface of the ground, pursuant to Hawaii Revised Statutes ("HRS") § 269-27.6(a), in connection with Project M0000697, the Waikapu 69kV Line Relocation project, Relocation of an Existing Overhead Transmission System.

I.

Background

MECO is a Hawaii corporation, which was initially organized under the laws of the Territory of Hawaii on or about April 28, 1921. MECO, a public utility as defined by HRS § 269-1, is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Maui; the production, transmission, distribution, and sale of electricity

on the island of Molokai; and the production, distribution, and sale of electricity on the island of Lanai in the State of Hawaii.

A.

Application

On June 13, 2006, MECO filed an application seeking commission approval to relocate an existing overhead transmission system above the surface of the ground ("Application"), Project M0000697--the Waikapu 69kV Line Relocation project, Relocation of an Existing Overhead Transmission system (the "Proposed Project"). MECO requested that the commission: (1) conduct a public hearing pursuant to HRS § 269-27.5 regarding its proposal to relocate an existing 69kV transmission line through a residential area under its Proposed Project; and (2) determine, pursuant to HRS § 269-27.6(a), that MECO's proposal to relocate the 69kV transmission line above the surface of the ground is appropriate.¹

In accordance with HRS § 269-27.5, the commission held a public hearing on August 11, 2006, regarding MECO's proposed construction plans at Lihikai School Cafeteria, 335 S. Papa Avenue, Kahului, Maui, Hawaii, 96732 ("Public Hearing").²

¹Copies of MECO's Application were served on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this docket pursuant to HRS § 269-51 and Hawaii Administrative Rules § 6-61-62. No persons moved to intervene or participate in this proceeding.

²During the scheduled Public Hearing, testimonies of MECO, the Consumer Advocate, and one individual (David H. Gleason,

Proposed Project

The Proposed Project was initiated at the request of landowners in the project area (Spencer Homes, Inc. ("Spencer"); Maui Lani; and Kihei Gardens & Landscaping Company, LLP ("Kihei Gardens")) and is being proposed to accommodate construction of new residential units and drainage needs for the Waikapu Gardens Subdivision and the development of future subdivisions in the area. Generally, the Proposed Project involves the relocation of a portion of the existing Waikapu 69kV transmission line (which normally serves the Waikapu and Wailuku areas of Maui) and underbuilt 12kV Waiale Circuit 1266 to a new right-of-way on Waiale Drive, located at Waikapu, Maui.

Work associated with the Proposed Project involves the installation of:

- (1) Approximately 28 steel poles, ranging from 70-80 feet in height above ground;
- (2) 6,680 circuit feet of 556.5 KCM transmission conductors;
- (3) 6,680 feet of 3/0 static line;
- (4) 6,680 circuit feet of 336.4 MCM distribution conductors; and
- (5) 6,680 feet of #3/0 AAAC neutral conductors.

Partner, Maui Lani 100 LLC ("Maui Lani") who testified in support of the Proposed Project) were received by the commission into the record of this proceeding. The transcript of the Public Hearing was filed with the commission on September 11, 2006.

Upon completion of the new steel pole line (which is designed for wind speeds of 100 miles per hour), the existing Waikapu 69kV transmission and 12kV Waiale Circuit 1266 lines, which are currently installed on wooden poles will be removed (i.e., 24 wooden poles and 6,367 circuit feet of 69kV transmission and 12kV distribution conductors).

MECO's construction plans have been approved by Spencer. Spencer agreed to grant MECO a substitute easement to relocate the 69kV and 12kV lines from the current alignment to the proposed new roadway. Specifically, Spencer agreed to provide MECO with an 80-foot wide roadway easement and a 15-foot wide perpetual easement parallel with the roadway easement. Kihei Gardens also agreed to provide MECO with a 15-foot wide perpetual easement parallel with the remaining portion of the roadway fronting its property.

MECO represents that the Proposed Project satisfies the requirements of HRS § 269-27.6(a). Specifically, MECO contends that the benefits (if any) of placing the 69kV and 12kV lines underground do not outweigh the costs associated with the project. "MECO estimates that it would cost approximately \$2.7 million more (\$4.4 million versus \$1.7 million) to underground the 69kV and 12kV lines than to relocate them overhead."³ It also states that the exiting overhead alignment would not be feasible for an underground line since the land

³See Application at 8.

under the existing easement is being developed for new homes and a drainage retention basin.⁴

Further, MECO represents that the visual impact due to the Proposed Project will not be significantly increased since the existing 69kV and 12kV lines are already constructed overhead in the project area. Moreover, MECO represents that, to the best of its knowledge: (1) there is no governmental public policy requiring the underground placement of the lines; (2) there is no other party willing to pay for the additional costs associated with constructing the lines underground; and (3) it is unaware of any other factors that warrant placement of the lines underground.

The current estimated cost of the Proposed Project is \$1,673,000. The relocation of the existing lines is estimated to take approximately three (3) months, with an additional two (2) months to remove the existing poles and lines.

2.

Possible Temporary Work

If the Proposed Project is not completed before the start of Phase 5 of Spencer's construction in the project area, MECO states that Spencer has requested, and will pay for, the installation (and subsequent removal) of temporary wooden poles. The possible temporary work involves the replacement of three

⁴While MECO considered condemnation of the easement, it determined that such action would cost approximately \$1.1 million (including legal fees) versus the cost of approximately \$400,000 for "in-kind" wood pole line relocation. Id.

(3) of the existing wooden poles within the existing corridor with four (4) new wooden poles to accommodate Spencer's construction. MECO represents that the temporary poles will be the same height as the existing wooden poles and that existing conductors will be attached to the new poles using the same conductor framing found on the existing poles. Thus, MECO asserts that the installation of the temporary poles to accommodate Spencer's construction schedule should not be considered a "new" line.⁵

MECO contends that a commission determination regarding the overhead construction of the temporary poles, as described in the Application, is not required under HRS § 269-27.6(a) nor is a public hearing required under HRS § 269-27.5. Nonetheless, if the commission determines otherwise, MECO requests commission approval of the installation of the temporary poles and a public hearing on the matter during the public hearing on the permanent overhead relocation of the 69kV line.

B.

Consumer Advocate's Position

On September 14, 2006, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to commission approval of the Application ("CA's Statement of Position"). In sum, the Consumer Advocate states that the

⁵The installation of temporary wooden poles is estimated to cost approximately \$36,000. The installed temporary poles will be removed upon the completion of the relocation of permanent overhead lines.

relocation of the 69kV line is reasonable since the existing alignment of the line runs directly through the construction site of the Waikapu Gardens Subdivision and the required drainage retention basin for the new subdivision. The Consumer Advocate's position is based on its review of the Proposed Project under the criteria of HRS § 269-27.6(a).

According to the Consumer Advocate, there appears to be "no significant immediate cost benefit to placing the relocated lines underground that would outweigh the additional" costs associated with underground placement of the lines.⁶ Among other things, it appears to the Consumer Advocate that the overhead relocation of the lines will not have a significant visual impact in the project area since: (1) MECO's existing facilities are currently located on overhead facilities and the proposed relocation of the lines appears to closely track the existing overhead route; (2) it observed during a site visit that the proposed route of the line is "largely undeveloped land with minimal scenic views"⁷; and (3) the existing 69kV and 12kV lines are currently attached to wooden poles that are approximately 60-70 feet tall.

The Consumer Advocate also states that there is no governmental mandate requiring the underground placement of the 69kV line. The Consumer Advocate recognizes that MECO, as the grantee, is responsible for the relocation cost of the lines under the easement agreement with the grantors. Additionally,

⁶See CA's Statement of Position at 8.

⁷Id. at 6.

the Consumer Advocate states that it believes that there is no governmental agency or any other party willing to contribute to the cost to underground the lines. The Consumer Advocate notes that no testimonies were presented or written statements received at the Public Hearing that raised concerns regarding the proposed overhead relocation of the 69kV line and that it is unaware of any other relevant factors related to the instant application aside from the reasonableness of the relocation of the lines by MECO.

Although not relevant to the Application, the Consumer Advocate notes that the cost of the Proposed Project, in general, does not appear to vary significantly when compared to other similar projects; however, it does recognize that the projected costs are estimates. Thus, the Consumer Advocate reserves the right to review the final costs associated with the Proposed Project in MECO's rate proceeding following completion of the Proposed Project.

II.

Discussion

HRS § 269-27.6(a) titled "Construction of high-voltage electric transmission lines; overhead or underground construction" states:

Notwithstanding any law to the contrary, whenever a public utility applies to the public utilities commission for approval to place, construct, erect, or otherwise build a new forty-six kilovolt or greater high voltage electric transmission system, either above or below the surface of the ground, the public utilities commission shall determine whether the electric transmission system shall be placed,

constructed, erected, or built above or below the surface of the ground; provided that in its determination, the public utilities commission shall consider:

- (1) Whether a benefit exists that outweighs the costs of placing the electric transmission system underground;
- (2) Whether there is a governmental public policy requiring the electric transmission system to be placed, constructed, erected, or built underground, and the governmental agency establishing the policy commits funds for the additional costs of undergrounding;
- (3) Whether any governmental agency or other parties are willing to pay for the additional costs of undergrounding;
- (4) The recommendation of the division of consumer advocacy of the department of commerce and consumer affairs, which shall be based on an evaluation of the factors set forth under this subsection; and
- (5) Any other relevant factors.

HRS § 269-27.6(a).

A.

HRS § 269-27.6(a) Analysis

First, under HRS § 269-27.6(a)(1), the commission finds that no benefit exists that outweighs the costs associated with constructing the lines underground. The cost differential to place the lines underground as opposed to overhead construction of the lines is projected to be approximately \$2.7 million (i.e., \$4.4 million less \$1.7 million). As the Consumer Advocate indicated, the project area is basically undeveloped with minimal scenic views that would be obstructed by the relocation of the

existing overhead lines to overhead facilities.⁸ MECO's existing facilities are currently located above ground, and the proposed relocation of the 69kV and 12kV lines will closely be aligned with the current route of the existing overhead facilities. Additionally, any presumed reduction of maintenance expenses resulting from underground placement of the lines would be minimal, if any, since MECO plans to use steel poles in the project area which: (1) are designed for wind speeds of 100 miles per hour⁹; (2) have a projected life span of approximately double that of wooden poles¹⁰; and (3) would eliminate termite problems.¹¹ Further, the commission received no public comments prior to, during, or after the Public Hearing regarding the benefits of placing the lines underground. Accordingly, there does not appear to be a benefit that outweighs the additional costs of placing the 69kV and 12kV lines of the Proposed Project underground.

Second, under HRS § 269-27.6(a)(2), the commission is unaware of any governmental policies requiring the underground placement of the 69kV line. As noted by the Consumer Advocate, there have been State legislative efforts to study the feasibility of requiring underground placement of all utility

⁸Id.

⁹See Application at 4.

¹⁰See Letter from Edward L. Reinhardt, President of MECO, to the Consumer Advocate responding to the Consumer Advocate's informal information requests, Exhibit A at 1 (September 12, 2006).

¹¹Id.

facilities, but none of the recommendations have resulted in a legislative mandate to underground all electric transmission lines.

Third, under HRS § 269-27.6(a)(3), the commission is unaware of any governmental agency or any other party willing to pay for the additional costs of placing the lines underground. In a letter dated May 16, 2006, the County of Maui ("County") confirmed its position that the underground placement of the utility lines in the project area is cost prohibitive and that the County's budget does not allow it the flexibility to pay for undergrounding the lines in the project area.¹² In addition, the landowners in the project area (Spencer, Maui Lani, and Kihei Gardens) have informed MECO that they will not pay for converting the transmission lines in the project area into an underground system.¹³

Fourth, under HRS § 269-27.6(a)(4), the commission recognizes that the Consumer Advocate, after reviewing the Proposed Project under HRS § 269-27.6(a), stated that it "does not object to the relocation of the 69kV lines to the proposed overhead facilities."¹⁴

Finally, under HRS § 269-27.6(a)(5), the commission notes that the underground alternative also appears to be cost prohibitive, in this case, since over 50% of the homes that Spencer is constructing in the new subdivision will be sold as

¹²Id. at Exhibit B.

¹³See Application, Exhibits III, IV, and V.

¹⁴See CA's Statement of Position at 11.

affordable housing pursuant to Spencer's agreements with the County and the State of Hawaii.¹⁵

Based on the foregoing, the commission concludes that the overhead construction of the lines in association with the Proposed Project, in the manner set forth in the Application, should be approved.

B.

Possible Temporary Work

If the Proposed Project is not completed before the start of Spencer's construction in the project area, Spencer has requested, and will pay for, the installation (and subsequent removal) of temporary wooden poles. MECO contends that a commission determination regarding the overhead construction of the temporary poles is not required under HRS § 269-27.6(a) nor is a public hearing required under HRS § 269-27.5.

Having reviewed MECO's representations, the commission finds that the temporary installation proposed by MECO does not trigger the public hearing requirement of HRS § 269-27.5¹⁶ nor

¹⁵See Application, Exhibit III.

¹⁶HRS § 269-27.5 (Construction of high-voltage electric transmission lines; hearing) states the following:

Whenever a public utility plans to place, construct, erect, or otherwise build a new 46 kilovolt or greater high-voltage electric transmission system above the surface of the ground through any residential area, the public utilities commission shall conduct a public hearing prior to its issuance of approval thereof. Notice of the hearing shall be given in the manner

analysis under HRS 269-27.6(a) since both statutes apply to the construction of "new" transmission lines. The installation of the temporary lines, as described in the Application, does not appear to constitute a "new" transmission system under the particular facts since: (1) it involves the replacement of three (3) existing wooden poles with four (4) new ones within the same existing corridor; (2) the replacement poles will be the same height as the existing poles; and (3) the existing conductor will be attached to the replacement poles using the same conductor framing found on the existing poles.

Based on the above, the commission concludes that the potential installation of the temporary poles, as contemplated in the Application, does not trigger the HRS § 269-27.5 public hearing requirement or analysis under HRS 269-27.6(a) in this particular instance.

III.

Orders

THE COMMISSION ORDERS:

1. The overhead construction of the 69kV transmission line in association with the Proposed Project, in the manner set forth in the Application, is approved, pursuant to HRS § 269-27.6(a).

provided in section 269-16 for notice of public hearings.

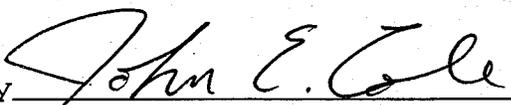
HRS § 269-27.5 (emphasis added).

2. This docket is closed, unless ordered otherwise by the commission.

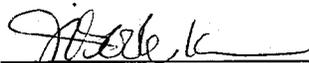
DONE at Honolulu, Hawaii OCT 30 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

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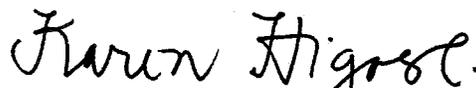
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22991 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: OCT 30 2006