

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)

DOCKET NO. 2006-0383

For the Approval of the Issuance of)
Refunding Special Purpose Revenue)
Bonds and Related Notes and)
Guarantees, and Authorization to)
Enter into Related Agreements.)

ORDER NO. 23161

RECEIVED
2006 DEC 29 A 8:42
DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed Dec. 27, 2006

At 1 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

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)
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Enter into Related Agreements.)

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By this Order, the commission grants HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"); HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"); and MAUI ELECTRIC COMPANY, LIMITED's ("MECO") (collectively, "Applicants")¹ motion for clarification and amends ordering paragraph no. 16 of Decision and Order No. 23100, filed on December 4, 2006 ("Decision and Order No. 23100"), as set forth herein.

On September 21, 2006, Applicants jointly filed an application requesting the approvals necessary to participate, at

¹HECO, HELCO, and MECO are Hawaii corporations and public utilities as defined by Hawaii Revised Statutes ("HRS") § 269-1 and, thus, are regulated by the commission under Chapter 269, HRS. Applicants are engaged in the production, purchase, transmission, distribution, and sale of electricity on the islands of Oahu, Hawaii, Maui, Molokai, and Lanai.

their discretion, in one or more sales by the Department of Finance of the State of Hawaii of Refunding Bonds, for Applicants' benefit, in the aggregate principal amount of up to \$125 million ("Application").²

By Decision and Order No. 23100, the commission approved the Application, with certain regulatory conditions. Among other things, in ordering paragraph no. 16 of the decision and order, the commission stated that:

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

Decision and Order No. 23100 at 24.

On December 14, 2006, Applicants filed their Motion for Clarification and/or Partial Reconsideration of Decision and Order No. 23100 ("Motion for Clarification")³ in which they request clarification of ordering paragraph no. 16 of Decision and Order No. 23100. Applicants represent that the current language of ordering paragraph no. 16 indicates that the commission might act to withdraw its authorization to issue Applicants' "notes and the revenue bonds they support subsequent to the issuance of the revenue bonds, and that . . .

²Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, an ex officio party to this docket, pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62. No persons moved to intervene or participate in this proceeding.

³Applicants filed their Motion for Clarification under HAR §§ 6-61-41 and 6-61-137. Applicants do not request a hearing on their Motion.

[Applicants'] notes or the revenue bonds they support would be deemed void as a result."⁴ Applicants contend that "[a] risk that the revenue bonds might thus be invalidated after issuance is not a reasonable risk that investors should be asked to bear."⁵ Applicants theorize that under the provision, a late filing of a report (a post-closing obligation) could lead to an invalidation of the bonds, which they assert is a "draconian consequence" for bondholders. They state that invalidation of the bonds should not result from the late filing of a report and that such a result was not the intent of the provision. Applicants further state that such a risk, though remote, "could lead to an increase in the interest rate that potential bondholders would require in order to take this perceived risk, and such a result would not be in the best interests" of Applicants or their ratepayers.⁶ While Applicants do recognize that this provision has been included in decisions and orders concerning recent financing applications, they contend that such language should not be included in Decision and Order No. 23100 for the reasons set forth above.

Acknowledging the commission's intent to ensure compliance with Decision and Order No. 23100, Applicants suggest that ordering paragraph no. 16 be clarified by deleting the phrase "shall constitute cause to void this Decision and Order" from the

⁴See Motion for Clarification at 2.

⁵Id.

⁶Id. at 2-3.

provision.⁷ Applicants state that this amendment "clarifies that the [c]ommission does not intend to take actions that may invalidate the bonds after their issuance and still makes clear that the [c]ommission has authority to pursue actions against . . . [Applicants] to remedy any non-adherence to the [c]ommission's orders -- but without unduly and unreasonably penalizing the bondholders."⁸

Having reviewed Applicants' Motion for Clarification, the commission finds that clarification of ordering paragraph no. 16 of Decision and Order No. 23100 is warranted. The commission's intent in Decision and Order No. 23100 was not to attach any additional risks, however remote, to the revenue bonds that could result in potential bondholders requiring a higher interest rate for the bonds, which the commission recognizes would not be in the best interest of Applicants' ratepayers. The language suggested by Applicants does appear to be an appropriate method of ensuring that Applicants adhere to the regulatory requirements of Decision and Order No. 23100 without attaching any additional risks to potential bondholders. Accordingly, the commission finds it reasonable to grant Applicants' Motion for Clarification and amend ordering paragraph no. 16 to read as follows:

⁷Alternatively, Applicants contend that while clarification of the ordering paragraph would be preferable, they also state that a partial reconsideration and modification of the ordering paragraph would also alleviate their concerns and that of their investors; and they provide alternative language, accordingly.

⁸See Motion for Clarification at 3.

Subject to the actions that are discretionary, Applicants shall conform to all of the commission's orders set forth above. Failure to adhere to the commission's orders may result in further regulatory actions as authorized by law.

Based on the foregoing, the commission concludes that Applicants' Motion for Clarification should be granted and ordering paragraph no. 16 of Decision and Order No. 23100 should be amended as specified above.

II.

Orders

THE COMMISSION ORDERS:

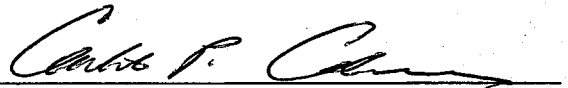
1. Applicants' Motion for Clarification, filed on December 14, 2006, is granted and ordering paragraph no. 16 of Decision and Order No. 23100 is amended to read as follows:

Subject to the actions that are discretionary, Applicants shall conform to all of the commission's orders set forth above. Failure to adhere to the commission's orders may result in further regulatory actions as authorized by law.

2. In all other respects, Decision and Order No. 23100 remains unchanged.

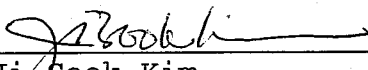
DONE at Honolulu, Hawaii DEC 27 2006.

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
06-0383.ac

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23161 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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Certificate of Service

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DATED: DEC 27 2006