BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of)
)
HAWAIIAN ELECTRIC COMPANY, INC.)
)
For Approval of a Multi-Year Syndicated Credit Facility, to Borrow Under the Syndicated Credit Facility, to Use the Proceeds of the Borrowings for Certain Purposes and to Use an Expedited Approval Procedure.)

DOCKET NO. 2006-0360

DECISION AND ORDER NO. 23301

Filed March 14, 2007

At 10 o'clock A .M.

Karen Higashi

Chief Clerk of the Commission

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

Karen Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION

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In the Matter of the Application of HAWAIIAN ELECTRIC COMPANY, INC. For Approval of a Multi-Year Syndicated Credit Facility, to Borrow Under the Syndicated Credit Facility, to Use the Proceeds of the Borrowings for Certain Purposes and to Use an Expedited Approval Procedure.	Docket No. 2006-0360 Decision and Order No. 23301

DECISION AND ORDER

By this Decision and Order, the commission approves HAWAIIAN ELECTRIC COMPANY, INC.'s ("HECO" or "Company") request for approval of a five-year $175 million unsecured revolving credit facility with a syndicated group of eight lenders referred to as the Syndicated Credit Facility ("SCF") and related promissory notes ("Notes") on the terms set forth in the Credit Agreement, dated March 31, 2006 (as amended on October 20, 2006) and related Notes, dated March 31, 2006.[1] The commission also approves HECO's requests to borrow under the SCF Credit Agreement, to use the proceeds from the borrowings, and to use an expedited approval procedure, as further described below.

[1]The Parties are HECO and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

I.

Background

A.

Application

HECO, a wholly-owned subsidiary of Hawaiian Electric Industries, Inc., is the franchised provider of electric utility service on the island of Oahu.

On April 3, 2006, HECO replaced its multiple bilateral lines of credit with a short-term, 364-day $175 million syndicated credit facility that will terminate on March 29, 2007 ("short-term credit facility").[2] On August 30, 2006, HECO filed an application seeking commission action:[3]

1. Approving the $175 million SCF Credit Agreement and related Notes for a five-year term ending on March 31, 2011, on the terms set forth in the Credit Agreement and related Notes, attached as Exhibits 4 and 5 to the Application.

2. Authorizing HECO to borrow under the SCF Credit Agreement, with maturities in excess of 364 days, from time to time, in amounts of up to an aggregate of $175 million.

3. Authorizing HECO to use the proceeds from the borrowings under the SCF, with maturities in excess of 364 days, for the purposes set forth in the Application.

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[2]Prior to executing the short-term credit facility, HECO had multiple bilateral lines of credit with six banks totaling $175 million, with terms of less than one year.

[3]HECO's Transmittal Letter; Application; Exhibits A, R, and 1 - 8; Verification; and Certificate of Service, filed on August 30, 2006, as supplemented by confidential Exhibits 9 and 10, filed on October 25, 2006 (collectively, the "Application").

4. Authorizing HECO to follow the procedures it proposes in Section V of its Application to obtain the commission's expedited approval in the future to: (A) increase the facility amount; (B) renew the SCF at or prior to its maturity; (C) refinance the SCF before maturity to take advantage of terms that are more favorable to HECO; and (D) change other terms of the SCF if such changes are required or desirable.[4]

Commission approval of the SCF will automatically extend the short-term credit facility, scheduled to terminate on March 29, 2007, to a five-year credit facility that will terminate on March 31, 2011. HECO requests commission action approving its requests without a hearing, stating that if timely approval is not received, HECO will need to start the process of obtaining an alternate credit facility, given the March 29, 2007 termination date of the short-term credit facility.

1.

SCF and Related Notes

The SCF authorizes HECO to borrow, prepay, and re-borrow revolving loans pursuant to the terms of the Credit Agreement. The eight participating lenders under the SCF are The Bank of New York ("BNY"); Bank of Hawaii; First Hawaiian Bank; Union Bank of California, N.A.; Wells Fargo Bank, N.A.; U.S. Bank National Association; Lehman Brothers Bank, FSB; and William Street Commitment Corporation. As the Administrative Agent and a lender under the SCF, BNY is responsible for the

[4]HECO filed its Application pursuant to HRS § 269-17 and HAR chapter 6-61, subchapter 9.

on-going monitoring and administration of the SCF, and coordinates communication with the group of lenders.[5]

The Credit Agreement, executed by HECO and each of the lenders, specifies the terms and conditions of lending, along with funding and yield protections, representations, warranties, covenants, events of default, and other provisions.[6] The principal terms and conditions of the Credit Agreement include:

SCF: A $175 million senior unsecured, revolving credit facility, provided that the amount of the facility may be increased twice, upon proper authorization from HECO's Board of Directors and the commission, by an aggregate amount not to exceed $50 million (i.e., to a maximum amount of $225 million), with commitments obtained from existing or new lenders. Each lender agrees to lend to HECO, on a pro rata basis with other lenders, up to the full amount of its commitment.

Maturity: Currently March 29, 2007, but will automatically extend to March 31, 2011, upon HECO's receipt of the commission's approval of the SCF.

Interest Rates: Borrowings by HECO will bear interest at a rate per annum equal to either (at HECO's option):

1. BNY's Alternate Base Rate ("ABR"), which is the greater of either:

   A. BNY's prime rate as publicly announced to be in effect at its principal office from time to time ("Prime Rate"); or

   B. 0.50% plus the Federal Funds Rate published by the Federal Reserve Bank of New York ("Federal Funds Rate"); or

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[5]HECO selected BNY to serve as the Administrative Agent following a solicitation and proposal process.

[6]HECO's Application, Exhibit 4 (Credit Agreement).

2. The Adjusted London Interbank Offered Rate ("LIBO Rate") (meaning the LIBO Rate adjusted for reserves), plus the Applicable Margin determined by HECO's senior debt ratings, for permitted periods of two weeks, or 1, 2, 3, or 6 months.

Interest at the ABR will be computed on the basis of a 365-day or 366-day year for the actual number of days elapsed for so long as the Prime Rate is applicable and on the basis of a 360-day year for the actual number of days elapsed for so long as the Federal Funds Rate or the Adjusted LIBO Rate is applicable for the actual number of days elapsed.

ABR borrowings mature when the SCF terminates, while Adjusted LIBO Rate borrowings have maturities ranging from two weeks to six months.

Prepayment Option: At any time in whole, or from time to time in part, in a minimum amount of $1 million.

Termination/ Reduction Option: HECO, at its option, can terminate or reduce the unused portion of the SCF, provided that any reduction is in a minimum amount of $5 million.

Fees: The various fees, as specified in the Credit Agreement, include the Commitment Fee (the lenders' charge for contracting to hold credit available), Administrative Agent Fee (for BNY to act as the administrative agent for its own account), and Utilization Fee.

The estimated costs for the SCF ($300,750) will be allocated among HECO, HELCO, and MECO.[7] HECO anticipates that "there will be no additional fees or costs (other than those associated with years two through five; i.e., commitment fees and

[7]The estimated costs consist of the Up-Front Lenders' Fee, Arrangement Fee, Legal Fees/Expenses, and Miscellaneous Expenses. See HECO's Application, Exhibit A (Estimated Costs: HECO $175 Million Syndicated Credit Facility).

any applicable borrowing fees) payable to the lenders to extend the $175 million SCF to five years."[8]

In connection with the Credit Agreement, HECO has executed eight Notes in favor of each lender in a principal amount of up to each lender's maximum commitment,[9] for an aggregate total of $175 million.[10] The Notes evidence the revolving loans made by the lender and referred to in the Credit Agreement. The amounts are payable under the Notes only if and to the extent HECO actually draws on the revolving loans.

2.

HECO's Position

In support of its Application, HECO states:

1. In April 2006, HECO replaced its multiple bilateral lines of credit with the current short-term credit facility in order to address rating agency concerns and to take advantage of other qualitative benefits governing syndicated credit facilities.[11]

HECO notes that syndicated credit facilities are viewed by rating agencies as having a stronger source of liquidity, while multiple bilateral lines of credit are viewed as a

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[8]HECO's Application, at 19.

[9]HECO's Application, Exhibit 5 (Notes).

[10]HECO's Application, Exhibit 3 (HECO Syndicated Credit Facility - Lenders' Commitments).

[11]See HECO's Application, at 7 - 9.

potentially unreliable source of funding.[12] "Rating agencies also generally prefer long-term (multi-year) syndicated credit facilities in assessing ratings of issuers' commercial paper programs, as such multi-year arrangements mitigate the risk that one or more lenders will not renew a bilateral facility when it expires and other lenders may not at the time be willing to step in."[13] Moreover, a stronger liquidity facility is expected to enhance HECO's creditworthiness, which, at a minimum, is expected to assist HECO in maintaining its current commercial paper ratings.

2. "[T]he SCF is expected to help HECO maintain its credit ratings which, in turn, will help to maintain its current cost of capital."[14]

3. Under the multi-year SCF, HECO has the ability to lock in more favorable and attractive bank market LIBO Rate spreads and commitment fees for five years. Moreover, HECO has a single contact, BNY, for organizational, administrative, and payment purposes.

4. While the SCF is available for capital expenditures, HECO intends to maintain the SCF principally to support the issuance of its commercial paper. "Although a credit facility is not legally required in order to issue commercial paper, commercial paper investors and rating agencies expect

[12]HECO cites to Exhibit 1 of its Application, Moody's Rating Methodology Handbook, Assessing the Strength of a Liquidity Facility, dated June 1999.

[13]HECO's Application, at 6.

[14]HECO's response to CA-SIR-3(a).

companies [that] issue commercial paper to have a credit facility in place."[15]

In the unlikely event that HECO is unable to access the commercial paper market due to a rating agency downgrade or a catastrophic event reduces or eliminates access to the commercial paper market, borrowings under the SCF will allow for the prepayment of maturing commercial paper as well as continued access to short-term funds. Thus, the commission's approval of the SCF will provide this liquidity for a five-year period, until March 31, 2011.

5. As of June 30, 2006, there were no borrowings under the short-term credit facility, and HECO currently does not intend to draw on or borrow under the SCF. "While HECO does not anticipate that the SCF will be drawn on for short-term borrowings and even less likely for long-term borrowings, the SCF does provide a safety valve of medium-term liquidity (i.e., up to approximately 5 years if the Application is approved) if it is needed to fund capital expenditures and/or to repay short-term or other borrowings used to finance or refinance capital expenditures."[16]

6. During the past seventeen years, HECO had to draw on its credit facility only once, due to the "9/11" catastrophe, which restricted HECO's access to the commercial paper market.

7. In the unlikely event HECO draws on the SCF, HECO will: (A) in all likelihood, borrow at the ABR to obtain same-day

[15]HECO's Application, at 4 - 5.

[16]HECO's response to CA-IR-5(a).

proceeds, as opposed to the LIBO Rate (three-day waiting period), and pre-pay the ABR borrowing, without penalty, or convert it to a fixed rate, short-term LIBO Rate borrowing; and (B) file with the commission by May 1 of each year, an annual report that includes information on the date, amount, interest rate, and maturity date for each draw.

8. HECO will use the proceeds from borrowings in excess of 364 days solely for capital expenditures or to repay short-term or other borrowings used to finance or refinance capital expenditures, or both, consistent with HRS § 269-17.[17]

3.

Expedited Approval Procedure

In Section V of its Application, HECO proposes to follow certain procedures for the purpose of obtaining the commission's expedited approval in the future to increase the facility amount; renew the SCF at or prior to its maturity; refinance the SCF before maturity to take advantage of terms that are more favorable to HECO; and to change other terms of the SCF if such changes are required or desirable. In this regard, HECO proposes the following specific procedures:

1. In Docket No. 2006-0360, HECO will file with the commission and serve upon the Consumer Advocate a letter request for expedited commission approval of any future transaction. "Th[e] letter will set forth the principal proposed parameters

[17]See HECO's Application, Exhibit 7 (HECO's Capital Expenditure Programs, 2005 - 2010); Exhibit 8 (HECO's Sources and Application of Funds); HECO's response to PUC-IR-101; and HECO's response to CA-IR-1.

within which such transaction is to be obtained," and include information on the facility amount, maturity date, interest rates, fees, and any significant variations from what is described in the present Application with respect to the principal terms and conditions of the SCF.[18]

2. "The letter request need not include any exhibits which contain balance sheet information, income statement information, sources and uses of funds information, capitalization ratios, year-end capital structure or interest coverage information."[19]

3. Upon the commission's expedited approval, HECO will be authorized to increase the SCF amount, renew the SCF at or prior to its maturity, refinance the SCF, or change other terms under which the SCF was issued if such transaction falls within the approved parameters.

According to HECO, the proposed Expedited Approval Procedure will permit HECO to act quickly and without the associated delay inherent in the filing of a formal application with the commission. Moreover, the proposed Expedited Approval Procedure is similar to the procedure approved by the commission in In re Hawaiian Elec. Co., Inc. and Hawaii Elec. Light Co., Inc., Docket No. 99-0120 ("Docket No. 99-0120"), Decision and Order No. 17253, filed on September 27, 1999.

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[18]HECO's Application, at 19 - 20.

[19]HECO's Application, at 20.

B.

Consumer Advocate's Position

In its Statement of Position filed on December 19, 2006, the Consumer Advocate informs the commission that it does not object to the approval of HECO's Application.[20] In reaching its conclusion, the Consumer Advocate states:

1. HECO represents that the main purpose of the SCF is to support HECO's commercial paper program and serve as an alternate source of liquidity. In this regard, the SCF appears to provide more assurances that participating lenders will fulfill the lending agreement, when necessary, which will serve to better guarantee HECO's commercial paper program. The SCF, in effect, will supplant HECO's use of multiple bilateral lines of credit with terms of less than a year, which did not require the commission's approval under HRS § 269-17.

2. HECO represents that it does not intend to borrow against the SCF. Nonetheless, "[s]ince HECO has indicated that it will file an annual report by May 1 of each year, should there be any outstanding monies borrowed under the SCF, the Commission will have the opportunity to review the activities under the SCF and determine whether [HECO] is appropriately treating the funds to avoid violating any statutory requirements[]" under HRS § 269-17.[21] Thus, it appears that HECO has sufficient

[20]Consumer Advocate's Statement of Position and Certificate of Service, filed on December 19, 2006 (collectively, "Statement of Position").

[21]Consumer Advocate's Statement of Position, at 7.

measures in place to appropriately track any monies borrowed under the SCF.[22]

3. "Notwithstanding the higher overall costs that are currently estimated for the SCF (as compared to multiple bilateral lines of credit), as the current financial markets view the SCF more favorably than bilateral lines of credit, the proposed SCF appears reasonable."[23]

4. The Consumer Advocate does not object to the approval of HECO's Expedited Approval Procedure to increase, renew, or refinance the SCF (or to change other terms of the SCF where required or favorable), subject to the condition that HECO, in its letter submitted to the commission and the Consumer Advocate, shows that the SCF (as increased, renewed, refinanced, or changed to reflect required or more favorable terms) is the most cost effective financing vehicle available.[24]

With respect to its proposed condition, the Consumer Advocate, in its response to HECO-IR-2, explains:

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[22]See HECO's response to CA-SIR-1 (HECO's internal guidelines to ensure that the use of proceeds borrowed under the SCF complies with HRS § 269-17, dated April 30, 2006).

[23]Consumer Advocate's Statement of Position, at 12. The Consumer Advocate notes that the estimated cost difference between the SCF and the bilateral lines of credit is relatively nominal, i.e., approximately $56,000 over the five years that the SCF will be in effect, "and may be a reasonable price to pay if the SCF is able to help HECO maintain or improve its credit ratings." Id. at 9.

[24]The Consumer Advocate, in its Statement of Position, phrases this same condition as requiring HECO to: (1) file the appropriate support to ensure that ratepayers' interests are protected; and (2) "submit an analysis to demonstrate that renewing or refinancing the SCF in the future is more cost effective than bilateral lines of credit." See Consumer Advocate's Statement of Position, at 11 - 12.

> The Consumer Advocate's position is that it will not object to the expedited regulatory treatment proposed by [HECO], if at the time of the expedited filing, [HECO] can clearly demonstrate that the proposed modification or renewal or any SCF is a prudent decision. In order to justify that the decision is prudent, it should be shown that the proposed modification or extension of the SCF is more cost effective than other financing alternatives to help support the commercial paper program. As articulated in [its Statement of Position], if the intent is to maintain the SCF primarily as a guarantee for the commercial paper program, but actual borrowings under the SCF will be made are unlikely, the prudence of incurring greater fees for the SCF as compared to other alternatives should be questioned.
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> . . . the Consumer Advocate assumes that [HECO] will prudently examine all available alternatives before reaching a conclusion on what financing alternative should be pursued. Based on that assumption, the Consumer Advocate's recommendation is merely requesting that [HECO] set forth that analysis to clearly demonstrate that [HECO's] preferred alternative is good not only for [HECO], but also for ratepayers.

Consumer Advocate's response to HECO-IR-2.

C.

HECO's Reply

In its Reply Statement of Position filed on January 31, 2007, HECO, in response to the Consumer Advocate's proposed condition, states that it "does not agree that it should demonstrate that the renewal or refinancing of the SCF is 'more cost effective than other financing alternatives to help support the commercial paper program,' without regard to the prudence of considering qualitative factors in the decision making process. Qualitative benefits should not be overlooked simply because they cannot be quantified."[25] HECO reiterates that the SCF will assist in maintaining its credit and capital-attracting ability, and provide a potential source of funding, if necessary.

In HECO's view, "it is reasonable, prudent and beneficial for ratepayers for [HECO] to consider both qualitative and quantitative factors when analyzing its options. If the renewal or refinancing of the SCF is determined to be the preferred option based upon qualitative and quantitative factors, an expedited approval procedure allows for reasonable flexibility for maintaining a back-up credit facility and permits [HECO] to act quickly and without the expense inherent in filing a formal application with the Commission."[26] HECO then asserts that the SCF offers a number of qualitative benefits even when HECO does not borrow under the SCF, including: the ability to increase the SCF, additional resources, administrative ease, long-term commitment, and market terms and conditions.[27] HECO concludes by commenting on the Consumer Advocate's use of the term "guarantee" in its Statement of Position and response to HECO-IR-2, asserting

[25]HECO's Reply Statement of Position; and Certificate of Service, filed on January 31, 2007 (collectively, "Reply Statement of Position"), at 3.

[26]HECO's Reply Statement of Position, at 4.

[27]See HECO's Reply Statement of Position, at 4 - 6 (Section II.B, Qualitative Benefits Apply When the SCF is Undrawn).

that "back-up" is the more appropriate term to use in such a context when discussing HECO's commercial paper program.[28]

D.

Parties' Stipulation

Section I of Stipulated Procedural Order No. 23061, filed on November 24, 2006, states in relevant part:

> Following HECO's Reply Statement of Position, the parties will meet informally to attempt to reach a stipulation on issues where there is agreement and/or partial agreement, and/or establish additional procedural steps, as required. The establishment of additional procedural steps will be subject to Commission approval. If pursuant to the establishment of additional procedural steps the parties request that the Commission conduct an evidentiary hearing in this proceeding, then the parties will designate witnesses that shall 1) be responsible for sponsoring the information contained in each section of their respective Statement of Position or Rebuttal Statement of Position, and 2) be available for cross examination. Matters related to Witnesses and Order of Examination at the Evidentiary Hearing will be established at a later date, if applicable.

Stipulated Procedural Order No. 23061, at 2 - 3 (emphasis added).

Following the filing of their respective position statements, the Parties, on March 6, 2007, filed a Stipulation, which resolves the Parties' differences with respect to the

[28]In essence, HECO explains that the SCF will serve as an alternate source of liquidity should commercial paper funds become unavailable, and thus, is a "back-up" source of funding with no legal obligation to make payment on HECO's commercial paper maturities, i.e., no guarantee. See HECO's Reply Statement of Position, at 7 (Section II.D, Consumer Advocate's Use of the Term "Guarantee").

Consumer Advocate's proposed condition.[29] Specifically, the Consumer Advocate clarifies that its reference to cost effective does not mean least cost, and that qualitative benefits may also be considered in HECO's analysis to justify the renewal or refinancing of the SCF through the Expedited Approval Procedure.[30]

With this clarification, the Parties stipulate and agree as follows:

1. The Company has demonstrated a need to have a $175 million SCF credit agreement and related Notes for a five-year term ending on March 31, 2011.

2. Based on the information provided by the Company, the Company should be allowed to borrow under the SCF credit agreement (including borrowing with maturities in excess of 364 days) from time to time in amounts up to an aggregate of $175 million.

3. Based on the information provided by the Company, the Company should be allowed to use the proceeds from borrowings with maturities in excess of 364 days under the SCF for the purposes set forth in the Application.

4. Based on the information provided by the Company, the Company should be allowed to follow the procedures specified in Part V of the Application in order to obtain expedited approval from the Commission to (a) increase the facility amount; (b) renew the SCF at or prior to its maturity; (c) refinance the SCF before maturity to take advantage of terms that are more favorable to the Company; and/or (d) change other terms of the SCF if such changes are required or desirable.

5. The Company will provide an analysis that shows the qualitative and quantitative benefits of the proposed SCF for any renewal or refinancing that is deemed to be the best alternative for maintaining a back-up credit facility.

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[29]Parties' Stipulation, filed on March 6, 2007.

[30]Parties' Stipulation, at 3 - 4.

> 6. This Stipulation shall apply solely to this proceeding. Each party expressly reserves the right to recommend its respective position in other regulatory proceedings and/or in this proceeding if the Commission does not accept the proposed stipulation described herein.

Parties' Stipulation, at 4 - 5.

In addition, by letter dated March 6, 2007, HECO requests that the commission approve the Application by March 14, 2007.[31]

II.

Discussion

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

[31]HECO explains:

> . . . If approval is not received before then, the Company will need to start negotiating a renewal of the current SCF. The Bank of New York, Administrative Agent for the SCF, has requested that we contact them on March 15, 2007 if we have not yet received the Commission's approval for the five-year SCF, as the current March 29, 2007 expiration date would be approaching quickly thereafter. The Company may incur additional costs if it has to renew the SCF.

HECO's letter, dated March 6, 2007, at 1. The Parties do not affirmatively request an evidentiary hearing, and in fact, HECO, as part of its Application, states that it does not request a hearing. See HECO's Transmittal Letter, at 1.

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 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.

HRS § 269-17.

Conversely, "[a] public utility corporation may not issue securities to acquire property or to construct, complete, extend or improve or add to its facilities or service if the commission determines that the proposed purpose will have a material adverse effect on its public utility operations." HRS § 269-17. "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." Id.

"Purposes 1 and 2 of [HRS § 269-17] contemplate situations where funds for capital acquisition or construction are to be expended after or nearly contemporaneously with the issuance of securities."[32]

HRS § 269-7(a) authorizes the commission to examine the condition of every public utility, including all of its financial

[32] In re Mauna Lani STP, Inc. and Hawaii-Am. Water Co., Docket No. 05-0229, Decision and Order No. 22299, filed on February 28, 2006, at 31 (quoting In re Waikoloa Resort Util., Inc., dba West Hawaii Util. Co., Docket No. 98-0090, Decision and Order No. 16340, filed on May 21, 1988, at 5).

transactions and its business relations with other persons, companies, and corporations.

HECO represents that while it does not intend to borrow any funds under the SCF, "if it becomes necessary, the proceeds from the borrowings with maturities in excess of 364 days could be used by [HECO] to finance its capital expenditures, and/or to repay portions of its existing short-term borrowings incurred to finance and refinance its capital expenditures."[33]

HECO also represents that the Credit Agreement and related Notes, if approved by the commission, will have no materially adverse effect on its public utility operations, and that none of its public utility assets will be pledged as security for the Credit Agreement and related Notes.[34] To the contrary, HECO states that the Credit Agreement and related Notes will provide it with greater financial flexibility, to the benefit of its public utility operations.[35] In short, HECO

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[33]HECO's Transmittal Letter, at 1. See also HECO's Application, at 10; HECO's response to PUC-IR-101; and HECO's response to CA-IR-1.

[34]HECO's responses to PUC-IR-101 and PUC-IR-102.

[35]As reiterated by HECO in its responses to the commission's and Consumer Advocate's information requests:

> . . . The SCF is intended to back up HECO's commercial paper issuance and provide HECO with short-term liquidity, including in the event a rating agency credit downgrade or catastrophic event reduces or eliminates access to the commercial paper market. The existence of such an agreement is itself viewed favorably by rating agencies as a source of liquidity and it has the advantages described in the Application over shorter-term bilateral agreements.
>
> Should HECO be unable to access the commercial paper market, any borrowings under the SCF in excess of 364 days would be used by [HECO] to finance its capital expenditures

maintains that the underlying purposes of the SCF are to: (1) support HECO's commercial paper program; (2) serve as an alternate source of liquidity; and (3) maintain and improve its credit rating.

Upon review, the commission finds that: (1) the proceeds from the SCF will be used by HECO for the purposes permitted under HRS § 269-17; and (2) there appears to be no evidence in the docket record that the SCF will have a materially adverse effect on HECO's public utility operations. Thus, as requested by HECO and agreed upon by the Consumer Advocate, the commission: (1) approves the SCF and related Notes; (2) authorizes HECO to borrow funds under the Credit Agreement, with maturities in excess of 364 days, from time to time, in amounts of up to an aggregate of $175 million; and (3) authorizes HECO to use the proceeds from the borrowings, with maturities in excess of 364 days, for the purposes set forth in its Application. In the event that HECO draws monies from the SCF, HECO shall file with the commission by May 1 of each year, an annual report that includes information on the date, amount, interest rate, and maturity date for each draw.

The commission also finds that HECO's proposed Expedited Approval Procedure to increase, renew, or refinance the

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> and/or to repay portions of its existing short-term borrowings incurred to finance and refinance its capital expenditures and could later be replaced by longer-term financing. <u>This would provide financial flexibility and be beneficial rather than adverse to HECO's public utility operations</u>.

HECO's response to PUC-IR-102 (emphasis added). <u>See also</u> HECO's response to CA-IR-1.

SCF (or to change other terms of the SCF where required or desirable), "is similar to that previously approved by the commission."[36] Accordingly, the commission approves HECO's Expedited Approval Procedure, subject to the Parties' stipulated condition that HECO "will provide an analysis that shows the qualitative and quantitative benefits of the proposed SCF for any renewal or refinancing that is deemed to be the best alternative for maintaining a back-up credit facility."[37]

III.

Orders

THE COMMISSION ORDERS:

1. The SCF, as set forth in the Credit Agreement, dated March 31, 2006 (as amended on October 20, 2006) and related Notes, dated March 31, 2006, are approved, pursuant to HRS § 269-17.

2. HECO is authorized to borrow funds under the Credit Agreement, with maturities in excess of 364 days, from time to time, in amounts of up to an aggregate of $175 million.

3. HECO is authorized to use the proceeds from the borrowings, with maturities in excess of 364 days, for the purposes set forth in its Application.

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[36] In re Hawaiian Elec. Co., Inc. and Hawaii Elec. Light Co., Inc., Docket No. 99-0120, Decision and Order No. 17253, at 15 (footnote and citations therein omitted).

[37] Parties' Stipulation, at 5 ¶ 5.

4. In the event HECO draws monies from the SCF, HECO shall: (A) file with the commission by May 1 of each year, an annual report that includes information on the date, amount, interest rate, and maturity date for each draw; and (B) serve copies of its annual report upon the Consumer Advocate.

5. HECO's Expedited Approval Procedure, set forth in Section V of its Application, for the purpose of obtaining the commission's expedited approval in the future to increase the facility amount; renew the SCF at or prior to its maturity; refinance the SCF before maturity to take advantage of terms that are more favorable to HECO; and to change other terms of the SCF if such changes are required or desirable, is approved, subject to the condition that HECO shall provide an analysis that shows the qualitative and quantitative benefits of the proposed SCF for any renewal or refinancing that is deemed to be the best alternative for maintaining a back-up credit facility.

6. Failure to comply with the requirements set forth in the ordering paragraphs above, may constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by law.

DONE at Honolulu, Hawaii MAR 14 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Michael Azama
Michael Azama
Commission Counsel

2006-0360.cp

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23301 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: MAR 14 2007