

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

ORDER APPROVING HAWAIIAN ELECTRIC COMPANY, INC.'S
AMENDMENT NO. 2 TO ITS CREDIT AGREEMENT

RECEIVED

2009 MAY 27 A 9:32

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

PUBLIC UTILITIES
COMMISSION

2009 MAY 26 P 12:08

FILED

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; (2) HECO's request to borrow under the SCF Credit Agreement; and (3) the use of an expedited approval procedure for any future action in this proceeding.

The Expedited Approval Procedure and the commission's approval thereto, are described in Decision and Order No. 23301 as follows:

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 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.

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."

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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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.

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III.

Orders

THE COMMISSION ORDERS:

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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.

Decision and Order No. 23301, filed on March 14, 2007, at 9-10, 12, and 22 (footnotes, text, and citations therein omitted).

II.

Discussion

Ordering Paragraph No. 5 of Decision and Order No. 23301 provides in relevant part that the commission may, on an expedited basis, approve HECO's request to change the terms of the SCF if such changes are required or desirable.

By letter dated April 14, 2009, HECO requests the commission's expedited approval of Amendment No. 2, dated February 6, 2009, to its Credit Agreement.² In support of its request, HECO explains:

. . . . Amendment No. 2 is required to make the credit facility accessible by HECO. Section 4.10 of the Credit Agreement requires that the Company's pension obligation ("accumulated benefit obligation") not exceed 25% of the fair market value of the pension plan assets. Due to the significant declines experienced in the equity markets in 2008, the Company could not make this certification under the Credit Agreement. However, the lenders to the Credit Agreement have already agreed to remove this requirement and HECO and the lenders have executed Amendment No. 2, memorializing said agreement, which will be effective upon approval by the Commission.

The HECO Board resolution authorizing the Credit Agreement authorizes the amendments. The key terms (facility amount, maturity date, interest rates and fees) of the original Agreement remain unchanged. The changes set forth in Amendment No. 2; which are discussed in detail in Exhibit 2 hereto, eliminate representations that

²A copy of Amendment No. 2 is attached to HECO's letter as Exhibit 1.

the Company would otherwise be required to make in order to make draws under the Credit Agreement.

HECO's letter, dated April 14, 2009, at 1-2 (emphasis added).

In Exhibit 2 of its request, HECO expands on its explanation as follows:³

Discussion

Currently, the Agreement defines ERISA Event to include the existence of an "accumulated funding deficiency," which prior to the Pension Protection Act of 2006 ("PPA") was a measure of a plan's funded status for Internal Revenue Code and ERISA purposes ("ERISA" means the Employee Retirement Act of 194, as amended from time to time).

The amended replaces the reference to "accumulated funding deficiency" in the definition of "ERISA Event" with a requirement that HECO and the other employers in the controlled group make the "minimum required contribution," which is mandated following the enactment of the PPA.

HECO is also deleting from the definition of "ERISA Event" provisions that disregard or treat adversely the filing for a waiver from the minimum funding standards. HECO believes, and the lenders have agreed, that there will be no ERISA Event so long as HECO and the other members of the controlled group make the "minimum required contribution," as adjusted based on any waiver that may be obtained.

. . . .

Discussion

Currently, Section 4.10 of the Agreement requires that HECO make certain representations with respect to "accumulated benefit obligations," which is a financial accounting term that does not have much relevance under SFAS 158 (SFAS 158 uses PBO (projected benefit obligation) rather than ABO (accumulated benefit obligation) to determine the balance sheet liability of a pension plan for financial reporting purposes). In addition, the funded percentage of accumulated benefit

³The acronym "SFAS" refers to the Statement of Financial Accounting Standards.

obligations is not the basis of determining the "minimum required contribution" to the plans. Rather, the minimum required contribution is determined under the PPA.

Therefore, Section 4.10 is being revised to eliminate the second and third sentences of that Section. Those sentences represent that the accumulated benefit obligation is not more than 25% above the fair market value of the Plan assets. "Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the [Internal Revenue] Code or Section 302 of ERISA, and in respect of which HECO, any subsidiary or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA. This representation is not true as of today and accordingly HECO cannot currently satisfy the condition to borrowing under the Credit Agreement that this representation be true at the times such a borrowing is requested and the requested loan is made.

Considering the developments since the Agreement was entered into, compliance with the Internal Revenue Code and ERISA standards for determining contributions should be the governing standards, rather than using a superseded financial accounting obligation measurement that has little relevance under SFAS 158 and that has no direct cash flow significance.

Exhibit 2 of HECO's letter, dated April 14, 2009, at 1-3.

Here, as represented by HECO: (1) as a result of significant declines in the equity markets during 2008, the lenders have agreed to certain amendments to the Credit Agreement in order to make the SCF accessible to HECO and to remove certain conditions that no longer have any direct impact on HECO's cash flow; and (2) the material terms of the original Credit Agreement remain unchanged. In addition, by letter dated May 11, 2009, the Consumer Advocate informs the commission that based on its review, it does not object to the commission's approval of HECO's

request.⁴ Accordingly, the commission: (1) finds that the changes to the Credit Agreement, as reflected in Amendment No. 2, are required or desirable in order for HECO to make draws under the SCF; and (2) approves HECO's request for expedited approval of Amendment No. 2 to its Credit Agreement.

II.

Order

THE COMMISSION ORDERS:

HECO's request, dated April 14, 2009, for expedited approval of Amendment No. 2 to its Credit Agreement, dated February 6, 2009, is approved.

DONE at Honolulu, Hawaii MAY 26 2009.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:


By
Leslie H. Kondo, Commissioner


Michael Azama
Commission Counsel

2006-0360.cp

⁴See Commission's letter, dated April 17, 2009 (requesting that the Consumer Advocate file a response to HECO's request); and Consumer Advocate's reply letter, dated May 11, 2009.

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

TAYNE S.Y. SEKIMURA
FINANCIAL VICE PRESIDENT
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, HI 96840-0001

DEAN MATSUURA
MANAGER, REGULATORY AFFAIRS
HAWAIIAN ELECTRIC COMPANY, INC.
P. O. Box 2750
Honolulu, HI 96840-0001

THOMAS W. WILLIAMS, JR., ESQ.
PETER Y. KIKUTA, ESQ.
GOODSILL ANDERSON QUINN & STIFEL
Alii Place, Suite 1800
1099 Alakea Street
Honolulu, HI 96813