

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 Approval of Projects Proposed )  
To be Financed Through the Sale of )  
Special Purpose Revenue Bonds, )  
Certification that the Projects are )  
For the Local Furnishing of )  
Electric Energy, Approval of )  
Issuance of Special Purpose Revenue )  
Bonds and Related Notes and )  
Guarantees, and Approval to Enter )  
Into Related Agreements and to Use )  
Expedited Approval Procedure. )  
 )

DOCKET NO. 2008-0281

DECISION AND ORDER

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

PUBLIC UTILITIES  
COMMISSION

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FILED

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Docket No. 2008-0281

DECISION AND ORDER

By this Decision and Order, the commission approves HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"); HAWAII ELECTRIC LIGHT COMPANY, INC. ("HELCO"); and MAUI ELECTRIC COMPANY, LIMITED's ("MECO") (collectively, "Applicants") request for the approvals necessary to participate, at their discretion, in one or more sales by the Department of Budget and Finance of the State of Hawaii (the "Department") of special purpose revenue bonds ("Revenue Bonds") under Act 160, Session Laws of Hawaii 2007 ("Act 160") up to the amounts authorized under the act (i.e., up to \$260 million for HECO, up to \$115 million for HELCO, and up to \$25 million for MECO), as described in Applicants' application filed on October 29, 2008, subject to certain conditions set forth herein.

I.

Background

Applicants 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. HECO, a wholly owned subsidiary of Hawaiian Electric Industries, Inc., is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Oahu in the State of Hawaii.<sup>1</sup> HELCO, a wholly owned subsidiary of HECO, is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Hawaii.<sup>2</sup> Likewise, MECO, a wholly owned subsidiary of HECO, is engaged in the production, purchase, transmission, distribution, and sale of electricity in the County of Maui, consisting of the islands of Maui, Molokai, and Lanai.<sup>3</sup>

A.

Application

On October 29, 2008, Applicants jointly filed an application ("Application") requesting the approvals necessary to participate, at their discretion, in one or more sales of Revenue

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<sup>1</sup>HECO was initially organized under the laws of the Kingdom of Hawaii on or about October 13, 1891.

<sup>2</sup>HELCO was initially organized under the laws of the Republic of Hawaii on or about December 5, 1894.

<sup>3</sup>MECO was initially organized under the laws of the Territory of Hawaii on or about April 28, 1921.

Bonds by the Department under Act 160, for Applicants' benefit.<sup>4</sup> The amount of Revenue Bonds authorized to be issued and sold under Act 160 is up to \$260 million for HECO, up to \$115 million for HELCO, and up to \$25 million for MECO.

Applicants state that their request for approval of the sale of Revenue Bonds, and related matters, is predicated on the need for additional funds for capital expenditures, including repaying portions of their short-term borrowing. According to Applicants, their estimated capital expenditures for the years 2008-2012 is forecasted to require approximately \$756 million, \$290 million, and \$275 million for HECO, HELCO, and MECO, respectively.<sup>5</sup> Applicants represent that "[i]nternal sources will not be adequate to meet this need for funds during the same period" and that the sale of Revenue Bonds will provide them with the needed additional funds for capital expenditures.<sup>6</sup>

Further, Applicants contend that HECO and HELCO's short-term borrowings are relatively high and that MECO is also in a borrowing position. According to Applicants, as of June 30, 2008, HECO's short-term borrowing (net of loans by HECO to HELCO and MECO) was about \$55.8 million, while HELCO and MECO's short-term borrowings were \$46.7 million and \$15 million,

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<sup>4</sup>Applicants served copies of their Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to all matters before the commission pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62. No persons moved to intervene or participate without intervention in this docket. Applicants and the Consumer Advocate are collectively referred to as the "Parties."

<sup>5</sup>See Application at 7.

<sup>6</sup>Id.

respectively. Short-term borrowing levels for HECO and HELCO are anticipated to grow by the end of 2008. Applicants contend that the issuance of Revenue Bonds would allow each of them to reduce the level of short-term borrowings, which in turn will aid liquidity and reduce interest rate risk.

In addition, Applicants contend that since the preparation of their financial forecasts in 2007, there have been concerns in the investment community regarding risks in the electric utility industry. Applicants state that they have little control over many of the business risks while they have some control over the impact of their capital structures on financial risk. Thus, Applicants contend that they now plan to manage their capital structure to maintain a ratio of combined preferred stock and common equity to total capitalization of approximately 58% for book purposes, as opposed to the 54% which was the targeted year-end ratios of common equity to total capitalization when the financial forecasts were prepared in 2007.<sup>7</sup> With this new target in mind, Applicants maintain that proceeds from the issuance of the Revenue Bonds are needed to fund (or pay down short-term borrowings incurred to fund) Applicants' capital expenditure programs.

Applicants assert that the Revenue Bond proceeds will be used either to pay for or to reimburse Applicants for qualified expenditures made on qualifying projects that have received all

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<sup>7</sup>The proposed changes to Applicants' capital structures will be examined and addressed in their respective rate case proceedings.

appropriate approvals and certifications.<sup>8</sup> Applicants state that the projects can proceed before the Revenue Bonds are sold, with project expenditures being financed through short-term borrowings or internal sources of funds. According to Applicants, qualifying expenditures made after the requisite "official action" can be reimbursed after the necessary Revenue Bond certifications and approvals have been obtained. Moreover, Applicants state that "[e]xpenditures related to the financing of the projects, as well as those related to the projects themselves, are eligible to be paid or reimbursed from the proceeds of the revenue bond sale."<sup>9</sup>

Applicants maintain that they wish to borrow the proceeds from sales of Revenue Bonds because in the current interest rate and tax environment, such borrowings entail a lower cost than do other forms of "equivalent" taxable debt. With limited exceptions, the interest earned by the buyer of Revenue Bonds is not taxable income for federal or state income tax purposes, making Revenue Bonds attractive to investors (even though they bear a lower interest rate than other forms of debt)

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<sup>8</sup>Applicants describe the process as follows: (1) legislative authorization is obtained, i.e., Act 160 in this case; (2) "official action" is obtained, i.e., June 8, 2007 for Act 160; (3) appropriate commission proceedings are conducted to obtain needed certifications and approvals, i.e., this proceeding; (4) public hearings, referred to as "TEFRA hearings," are held by the Department; (5) Revenue Bonds are sold when market conditions are appropriate and the proceeds are placed in the custody of the construction fund trustee; and (6) Applicants establish that qualifying expenditures have been made on approved and certified projects to the satisfaction of the construction fund trustee, who then allows Applicants to draw down the proceeds to pay or reimburse Applicants for their capital expenditures. See Application at 9-10.

<sup>9</sup>Id. at 10.

since the interest paid on other forms of debt will be taxable to the recipient.

As such, Applicants request the following approvals and certifications:

1. Approval of the energy projects permitted to be financed by borrowing proceeds from the issuance and sale of Revenue Bonds, listed in each of Applicants' Exhibit 3 of the Application ("Project Lists"), under Act 160;
2. Certification that the energy projects listed on Applicants' Project Lists are for the local furnishing of electricity;
3. Approval of a procedure to allow each of the Applicants to obtain, by motion, approval of supplemental projects, required under Act 160, and required certification of them, in accordance with HRS § 39A-191(2);
4. General approvals related to revenue bond financings ("Revenue Bond Financings), including:
  - a. Approval for Applicants to each (alone or together with one or both of the others) to participate with the Department in one or more Revenue Bond Financings, of up to the total amount of Revenue Bonds authorized by Act 160 (i.e., up to \$260 million for HECO, up to \$115 million for HELCO, and up to \$25 million for MECO);

- b. Approval to borrow proceeds from the issuance of Revenue Bonds through entry into one or more loan agreements with the Department (each "Loan Agreement") and issuance by the participating Applicants of their respective notes ("Notes");
- c. Approval for each of the Applicants to issue the Notes and to execute and deliver the Notes and Loan Agreements, including HECO's authorization, at its discretion, to issue its guarantees of any obligations of HELCO and MECO (including, but not limited to under the Notes and each Loan Agreement (the "HECO Guarantees")) and to execute and deliver other financing documents (collectively, the "Financing Documents") that are necessary or desirable to complete the Revenue Bond Financings;
- d. Approval to carry out each of the Revenue Bond Financings either alone or combined with revenue bond financings under future legislative authorizations to finance facilities for the local furnishing of electric energy and/or with refunding revenue bond financings in a single offering, consisting of one or more series;

- e. Approval to purchase bond insurance for one or more series of Revenue Bonds issued under Act 160 if the purchase of bond insurance is desirable and provides an overall savings in comparison to a sale of Revenue Bonds under Act 160 without insurance, and to enter into one or more negative covenant agreements and other agreements between HECO and the bond insurer if a negative covenant and/or other agreements are required as a condition to obtaining the bond insurance.
- 5. Approval to participate in the issuance and sale of Revenue Bonds under Act 160 ("Act 160 Bonds"), in one or more offerings and in one or more series, within the parameters listed in Part IX of the Application, of up to a total of \$260 million for HECO, \$115 million for HELCO, and \$25 million for MECO; and
- 6. Approval of the procedure described in Part X of the Application to obtain expedited commission approval for any changes in or additions to the parameters under which the Act 160 Bonds may be issued, if such changes or additions are required after the parameters are approved as requested in the Application.

Applicants make their requests pursuant to HRS § 269-17 and Subchapter 9 of Chapter 6-61, HAR.<sup>10</sup>

1.

Approval of Projects

a.

Act 160

By Act 160, the 2007 Hawaii State Legislature ("Legislature") authorized the Department to issue up to \$400 million in Revenue Bonds, in one or more series. Under the act, the Revenue Bonds can be issued during the period from the effective date of Act 160 (i.e., July 1, 2007) through June 30, 2012, for Applicants' projects for the local furnishing of electric energy, and may be sold from "time to time" between the commission decision in this docket and June 30, 2012 (the expiration date of Act 160).

b.

Project Lists

The commission, under Act 160, must approve any project financed by the issuance of the Revenue Bonds. Specifically, Section 2 of Act 160 provides that "commission approval shall be

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<sup>10</sup>Applicants state that their audited financial statements for the year ended December 31, 2007, were filed with the commission on March 4, 2008, and are incorporated in their Application by reference. HAR § 6-61-76 provides, in relevant part, that financial information may be provided by reference to a specific document or documents, or parts thereof, previously filed with the commission.

required for any project financed by the issuance of special purpose revenue bonds under this Act."

Applicants attached their Project Lists<sup>11</sup> to the Application, which describe the energy projects that each utility currently proposes to finance, in whole or in part, from loans of proceeds from the Revenue Bond Financings. They request commission approval of the projects identified in the Project Lists for each of the Applicants pursuant to Act 160.

The estimated cost of the projects listed on the Project Lists, based on each Applicants' project forecasts, is approximately \$164 million for HECO, approximately \$92 million for HELCO, and approximately \$33 million for MECO. The amounts for HECO and HELCO are lower than the \$260 million and \$115 million, respectively, which Act 160 authorizes to be raised by the sale of Revenue Bonds. However, Applicants contend that the cost of these projects will be in excess of the principal amount of borrowing for HECO and HELCO, respectively, expected for the anticipated first sale of Revenue Bonds under Act 160. Applicants state that they will request further project approvals and certifications from the commission as needed by Applicants to support additional sales of Revenue Bonds under Act 160 after the initial issuance.

Moreover, Applicants state that the Legislature in 2007 enacted Act 61, which makes any project funded using Revenue Bonds issued after May 3, 2007, subject to Hawaii's prevailing

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<sup>11</sup>See Application, Exhibits 3.

wage law set forth in HRS Chapter 104 ("Act 61").<sup>12</sup> While Applicants had previously requested commission approval of project lists, which included many projects with estimated costs that substantially exceeded the amounts authorized for each utility under the respective legislation, due to the need to comply with Act 61, Applicants state that they are being selective in identifying the projects to be funded by the sale of Revenue Bonds. Thus, according to Applicants, "in order to expedite and simplify the anticipated initial issuance of revenue bonds, HECO and HELCO are each seeking approval and certification only for expenditures related to CIP1 and ST-7."<sup>13</sup> Since MECO does not have a similarly large project, it is seeking approval and certification of multiple projects.

Applicants' Project Lists include certain projects for which commission approval is required pursuant to Paragraph 2.3.g.2 of the commission's General Order No. 7, Standards of Electric Utility Service in the State of Hawaii, as modified by Decision and Order No. 21002, filed May 27, 2004, in Docket No. 03-0257 ("Rule 2.3.g.2").<sup>14</sup> However, Applicants contend that

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<sup>12</sup>Applicants summarize that under HRS Chapter 104, Applicants' contractors are required to: (1) pay prevailing wage rates as determined by the Hawaii Department of Labor and Industrial Relations ("DLIR") to laborers and mechanics working on construction projects subject to HRS Chapter 104, including employees of contractors and subcontractors, as well as employees of Applicants working on such projects; (2) pay such employees on a weekly basis; and (3) certify the payrolls and submit certification to the DLIR. See Application at 15-16.

<sup>13</sup>Id. at 16.

<sup>14</sup>As modified, Rule 2.3.g.2 requires commission approval of proposed capital expenditures for any single project in excess of

the approvals required under Rule 2.3.g.2 are separate and distinct from the approvals requested in the instant proceeding pursuant to Act 160. Applicants assert that they are not requesting approval of the projects under Rule 2.3.g.2 in this docket.

In addition, Applicants' Project Lists include some above-ground transmission system projects that are subject to public hearings pursuant to HRS § 269-27.5.<sup>15</sup> Citing prior commission decisions, Applicants state that public hearings under HRS § 269-27.5 are not a prerequisite for commission approval of the projects either under HRS § 269-17 or Act 160.<sup>16</sup> Thus, Applicants are not requesting approval of the projects under HRS § 269-27.5.

Further, Applicants' Project Lists include some projects involving overhead or underground construction of transmission lines pursuant to HRS § 269-27.6. Applicants maintain that the approvals requested in this docket under Act 160 are separate and apart from the commission's review and

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\$2.5 million, excluding customer contributions, or ten percent of total plant in service.

<sup>15</sup>HRS § 269-27.5 requires that a public hearing be held whenever a utility plans to build a new 46 kilovolt ("kV") or greater high-voltage electric transmission system above the surface of the ground through any residential area.

<sup>16</sup>See Application at 18 n.7 (citing Decision and Order No. 10836, filed on November 9, 1990, in Docket No. 6797; Decision and Order No. 12651, filed on October 6, 1993, in Docket Nos. 7624 and 6797; Decision and Order No. 14396, filed on November 28, 1995, in Docket No. 95-0096; Decision and Order No. 15340, filed on January 28, 1997, in Docket No. 96-0381; and Decision and Order No. 17253, filed on September 27, 1999, in Docket No. 99-0120).

determination pursuant to HRS § 269-27.6(a).<sup>17</sup> Applicants assert that they are not requesting a commission determination under HRS § 269-27.6 in this proceeding, and that they will submit separate requests for such determinations in separate applications.

2.

### Certification of Projects

Applicants request that the commission certify that the projects set forth on their respective Project Lists are for the "local furnishing of electric energy" pursuant to HRS § 39A-191(2).<sup>18</sup> According to Applicants, all of the facilities included in their Project Lists are for the "local

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<sup>17</sup>HRS § 269-27.6(a) requires that whenever a public utility applies to the commission for approval to build a new 46 kV or greater transmission system, either above or below the surface of the ground, the commission shall determine whether the transmission system should be built above or below the surface of the ground and 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 transmission system to be 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 Consumer Advocate; and (5) any other relevant factors. Commission determination for a 138 kV or greater transmission line requires an evaluation of other factors set forth in HRS § 269-27.6.

<sup>18</sup>HRS § 39A-191(2) provides, in relevant part, that "energy project" "means any facilities for each single project or multiproject program of a project party which is certified by the public utilities commission as being for the local furnishing of electric energy or gas; provided that any new generating unit for the production or generation of electric energy from fossil fuels shall not be considered an energy project for purposes of this part unless specifically authorized in any act providing for the authorization of the issuance of bonds pursuant to this part."

furnishing of electric energy" under HRS § 39A-191. In addition, Applicants claim that all four requirements of HRS § 39A-191(3) are met for each of the facilities, as the facilities include only property or land that is or will be: (1) depreciable property or land; (2) used to produce, collect, generate, transmit, store, distribute or convey electric energy; (3) used in the trade or business of furnishing electric energy; and (4) part of systems providing service to the general public in the Honolulu, Hawaii or Maui counties.

3.

Supplemental Project Approval and Certification

Applicants request that the commission approve the following procedure to obtain commission: (1) approval of supplemental energy projects permitted to be financed by borrowing proceeds from the issuance and sale of Revenue Bonds under Act 160; and (2) certification that the supplemental energy projects are for the local furnishing of electricity in accordance with HRS § 39A-191(2):

1. HECO, HELCO and/or MECO will file with the commission in this docket, and deliver to the Consumer Advocate, a motion requesting approval of the supplemental projects under Act 160 and certification of the supplement projects under HRS § 39A-191(2). Testimony related to the projects, similar to that provided for in the Application, will be provided with the motion.
2. Upon commission approval and certification of the supplemental projects, the applicable company shall be authorized to finance the supplemental energy projects with proceeds obtained from the issuance and sale of Revenue Bonds under Act 160.

Applicants contend that the proposed procedure is similar to what occurred in Docket No. 99-0120 with regards to approval of supplemental Revenue Bond projects under Act 262, Session Laws of Hawaii 1998 and the required certification of them.<sup>19</sup>

4.

General Approvals Related to Revenue Bond Financings

a.

Combined Financings

According to Applicants, the exact timing and amounts of each series of the sale of Revenue Bonds are primarily dependent on market conditions and the timing of project expenditures for Applicants' projects. Applicants contend that there will likely be more than one sale of Revenue Bonds by the Department to obtain the total \$400 million authorized for Applicants' projects under Act 160.

Thus, Applicants request the flexibility to carry out each of the Revenue Bond Financings either alone or combined in a single offering with (a) one or more series of Revenue Bonds issued under future legislative authorizations to finance facilities of the relevant utility for the local furnishing of electricity ("Non-refunding Bonds), and/or (b) one or more refunding revenue bond financings. Applicants assert that this flexibility would allow financings to be combined if circumstances present at the time make it desirable to do so.

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<sup>19</sup>See Application at 21.

b.

Sale in One or More Series

Applicants further request permission to structure the proposed Revenue Bond Financings so that Revenue Bonds can be sold in one or more series in a single offering, which permits each series to be issued with its own pricing terms. Applicants state that they have been advised that this type of flexibility could attract a greater number of investors, thereby decreasing the interest rate or rates at which bonds can be sold.<sup>20</sup>

c.

Principal Financing Documents

According to Applicants, each of the Revenue Bond Financings will involve the following principal Financing Documents (or their equivalents, however designated) which are in substantially the same form as documents used for previous Revenue Bond Financings completed by Applicants:

1. Preliminary Official Statement and Final Official Statement covering each Revenue Bond Financing, describing the Revenue Bonds and the principal bond documents, and providing certain information concerning the relevant Applicants;
2. Loan Agreement between the Department and the relevant Applicants, typically including the HECO Guarantee of any obligations of HELCO and MECO, and specifying the form of the Notes to be issued

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<sup>20</sup>Id. at 23-24.

- by each of the relevant Applicants to evidence their respective borrowings;
3. Bond Purchase Agreement between the Department and the underwriters representing the underwriters' agreement to purchase the Revenue Bonds from the Department, subject to a number of conditions;
  4. Inducement Letter to the Department and the underwriters from the relevant Applicants making numerous representations, providing indemnities, and requesting that the Department and the underwriters execute and deliver the Bond Purchase Agreement;
  5. Trust Indenture between the Department and the bond trustee, which will cover the mechanics for issuing, paying, redeeming and administering the Revenue Bonds and for the deposit at closing, and the distribution to the relevant Applicants, of the proceeds from the sale of the Revenue Bonds;
  6. Notes to evidence the borrowing by each of the Applicants, as applicable, of the proceeds from each Revenue Bond Financing;
  7. Tax Certificate and Agreement between the Department and the relevant Applicants under which the Applicants will commit to preserve the tax-exempt status of the related Revenue Bonds;
  8. Continuing Disclosure Agreement between the bond trustee and the relevant Applicants requiring the

Applicants to provide certain on-going information to certain repositories, which in turn make the information available to the public;

9. Insurance Agreement (if applicable) between the bond insurer and the relevant Applicants setting forth any post-closing obligations of Applicants not included in other Financing Documents, such as payment of post-closing insurance premiums, if any; and
10. Bond Insurance Policy (if applicable) issued by the bond insurer setting forth terms of the bond insurance coverage.

d.

Loan Agreement (and HECO's Guarantees)

Applicants anticipate entering into one or more Loan Agreements with the Department, as provided for in HRS § 39A-195, with respect to financing part or all of the costs of the projects on Applicants' Project Lists.<sup>21</sup> Funds held by the construction fund trustee prior to the need for the funds for such projects will be invested as directed by the appropriate Applicants, unless there is a default. Interest earned on these funds will be credited to the construction fund or bond fund in accordance with the Trust Indenture.

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<sup>21</sup>Under each Loan Agreement, the Department will lend the participating Applicants the proceeds from each sale of Revenue Bonds, which in turn will be utilized by the Applicants to pay (or reimburse Applicants for) construction and other energy project costs.

Aside from certain necessary or desirable changes unique to these transactions, each Loan Agreement is expected to have substantially the same form as the loan agreements entered into by Applicants in previous sales of Revenue Bonds and refunding Revenue Bonds that have been filed with the commission.<sup>22</sup>

Under each Loan Agreement, Applicants will be obligated to repay their respective proceeds borrowed from the sale of the Revenue Bonds by making payment in amounts sufficient to pay the principal of, redemption premium (if any), and interest on the Revenue Bonds as such amounts become due. To evidence the obligation to repay each loan, each of the Applicants participating in the Revenue Bond Financing will deliver to the Department or the bond trustee its Note in the amount of its respective loan. The Notes of all Applicants participating in the Revenue Bond Financing taken together will be in an aggregate principal amount equal to the principal amount of the related issue of Revenue Bonds. The terms of the Notes will generally be duplicative of the terms of the related Revenue Bonds with respect to interest rates, maturity, redemption, and other provisions.

The Notes and any related agreements (i.e., the obligations) of HELCO and MECO under the Loan Agreements for which they are a party will probably be guaranteed by HECO. Aside from certain necessary or desirable changes unique to these

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<sup>22</sup>Applicants refer to Docket Nos. 6554, 6797, 7624, 95-0096, 97-0351, 99-0060, 99-0120, 00-0120, 03-0045, 04-0303, 05-0330, and 2006-0383. See Application at 26.

transactions, Applicants anticipate that HECO's Guarantees will be in substantially the same form as the guarantees set forth in the loan agreements previously filed with the commission in prior dockets.<sup>23</sup>

e.

Other Agreements and Instruments

According to Applicants, it may also be necessary for them to enter into other agreements and deliver other instruments in connection with each proposed Revenue Bond Financing. Applicants contend that any such proposed arrangement will be included in their requests for expedited approval of parameters for the related series of Revenue Bonds, as described in Section X of the Application.

f.

Allocation of Proceeds, Type of Sale and Interest Rate

If less than the entire aggregate principal amount of Revenue Bonds authorized by Act 160 is to be offered in a sale of such bonds, then the borrowing of the proceeds from each sale authorized by Act 160 will be allocated among the Applicants based primarily on the timing and relative amounts of their project expenditures. Applicants state that the exact allocation of the borrowings will be determined near the time that the Revenue Bonds are sold. The Notes issued by each of the

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<sup>23</sup>Applicants refer to Docket Nos. 6554, 6797, 7624, 95-0096, 97-0351, 99-0060, 99-0120, 00-0120, 03-0045, 04-0303, 05-0330, and 2006-0383. See Application at 27.

Applicants will correspond to the respective amounts loaned to each of them. Applicants anticipate that the Revenue Bonds will be sold through negotiated public offerings. According to Applicants, a negotiated sale offers more timing flexibility and permits the development of a relationship with investment bankers who are willing to provide other services to Applicants.

While interest rates for Revenue Bonds may be a fixed or floating rate, Applicants seek approval to issue the Revenue Bonds as fixed rate bonds. Applicants state that if approval to issue floating rate revenue bonds is desired, they will ask for expedited commission approval of this parameter.

g.

#### Issuance Costs

The consolidated issuance costs of the proposed Revenue Bond Financings, which are estimated to be approximately \$4.311 million,<sup>24</sup> will generally be allocated among Applicants based on the relative amounts of the net proceeds loaned to each of them. A detailed description of the issuance costs for the proposed Revenue Bond Financing is set forth in Exhibit A to the Application.

h.

#### Bond Insurance and Negative Covenants

With regard to the proposed transactions, Applicants request approval to purchase bond insurance for one or more

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<sup>24</sup>See Application, Exhibit A.

series of Revenue Bonds issued under Act 160, if, in their judgment, the procurement of bond insurance will result in net cost savings after taking into account the insurance premiums that must be paid by Applicants to obtain the insurance, and such savings are not outweighed by the disadvantages of restrictions imposed by the bond insurer. Applicants represent that bond insurance obligates the insurer to make interest and principal payments on insured bonds in the event Applicants do not make such payments.

Applicants state that, since insurance effectively makes the insurer ultimately liable for the interest and principal payments, insured Revenue Bonds in the past have received the historically higher credit ratings of the insurer, as opposed to the credit ratings of HECO and its subsidiaries, thereby reducing the interest rate to be paid by Applicants for the bonds. However, due to the recent credit rating downgrades experienced by several bond insurers, it may no longer be economical under current markets to purchase bond insurance for the upcoming Revenue Bond sale. If bond insurance is purchased, Applicants contend that the interest savings would have to be weighed against the premiums to be paid for the insurance and other negative aspects of the insurance arrangement. Thus, Applicants request authority to purchase bond insurance if it will result in an overall savings that in the judgment of Applicants outweighs any negative aspects of the arrangements with the bond insurer, and if the sale (or sales) of Revenue

Bonds under Act 160 can be concluded on a timely basis with the purchase of bond insurance.

Moreover, if bond insurance is purchased, Applicants request commission approval to enter into agreements with the bond insurer that contain negative covenants and other restrictions. Negative covenants would provide, for example, 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."<sup>25</sup>

Applicants state that the disadvantage of the proposed negative covenant would be to restrict their ability to issue secured debt in the future. However, according to Applicants, this is not a meaningful disadvantage since, among other things, they do not intend to issue secured debt in the future and since Applicants are subject to similar restrictions through provisions in already outstanding agreements. In addition, Applicants contend the negative covenant would have several negotiated exceptions to provide financing flexibility, and in the worst

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<sup>25</sup>See Application at 30-31. Applicants also contend that each negative covenant agreement is expected to have substantially the same form as the one entered into by HECO in previous sales of Revenue Bonds and refunding revenue bonds filed with the commission in Docket Nos. 99-0120, 99-0060, 00-0120, 03-0045, 04-0303, 05-0330, and 2006-0383. See Application at 31.

case, would permit the issuance of secured debt if the insured bonds covered by such covenants were at the same time equally and ratably secured.<sup>26</sup>

Furthermore, if Applicants decide to procure bond insurance, the insurer may also require other restrictive provisions, such as mandatory redemption and loan repayment provisions, including, but not limited to, provisions that

in substance provide for a mandatory redemption of the bonds upon written notice from the bond insurer to the trustee for the bonds that the bonds are to be called for redemption because (a)(i) HECO has reorganized or transferred a substantial portion of its assets, (ii) the reorganization or transfer has resulted in HECO no longer being engaged in the business of the distribution of electricity in the City and County of Honolulu, (iii) the obligations of HECO under its loan agreement and note have neither been assumed nor guaranteed by the resulting entity that is thereafter to engage in the distribution of electricity in the City and County of Honolulu and (iv) the bond insurer has not consented to such reorganization or transfer; or (b) HECO has failed to pay to the bond insurer any insurance premiums in respect of the bond insurance that are due under a deferred premium arrangement.

Application at 31-32.

In considering the purchase of bond insurance, Applicants will weigh the overall financial savings of procuring insurance against the restrictions of the related negative covenant and restrictive provisions. If, in the judgment of Applicants, "the savings that will be realized by purchasing bond insurance outweigh the restrictions, and if the related sale can be concluded on a timely basis with the purchase of bond insurance, then . . . [Applicants] request the flexibility to

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<sup>26</sup>Id.

purchase bond insurance and enter into a related negative covenant and other restrictions" required by the insurer.<sup>27</sup>

5.

Approval to Participate in Sale of Act 160 Bonds

In connection with their request to participate in the issuance and sale of Revenue Bonds under Act 160, Applicants request commission approval of the following parameters within which Act 160 Bonds and the related Notes may be issued:

Designation: Each series of bonds shall include in its designation the year of issuance (e.g., 2009) and, if any of the Applicants anticipate issuing more than one series of special purpose revenue bonds or refunding special purpose revenue bonds in that year, a letter designating the particular series (e.g., "Series 2009A").

Aggregate Principal Amount: Up to \$400,000,000 as follows:  
HECO: up to \$260,000,000  
HELCO: up to \$115,000,000  
MECO: up to \$25,000,000

Maturity: Such date for each series of bonds which is not more than 30 years from the date of issuance and not more than 120% of the weighted average reasonably expected economic life of the projects to be financed with the proceeds of the bonds, calculated in compliance with Section 147(b) of the Internal Revenue Code.

Interest Rate: Fixed interest rate not to exceed 11.0%.<sup>28</sup>

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<sup>27</sup>Id. at 32.

<sup>28</sup>Originally, Applicants had requested an interest rate parameter of a "fixed interest rate not to exceed 8.0%." However, by letter filed on December 18, 2008, this parameter was revised to a "fixed interest rate not to exceed 11.0%." According to Applicants, this change is needed due to current

Price: Not less than 95% of the principal amount of the bonds.

Underwriting Commission: Up to 2.0% of the principal amount of the bonds.

Redemption/Repurchase Provisions: Mandatory and/or optional redemption or repurchase provisions substantially as provided for in connection with previous series of special purpose revenue bonds or refunding special purpose revenue bonds issued for the benefit of the Applicants, 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, including the use of a "make whole" redemption premium methodology and/or (b) if more than one series of bonds is issued, the redemption provisions may vary as between each series of bonds.

Covenants: Substantially as provided for in pervious series of special purpose revenue bonds or refunding special purpose revenue bonds issued for the benefit of Applicants.

6.

Approval to Use Expedited Approval Procedure

Applicants request that the commission approve the following procedure to obtain expedited approval from the commission for any changes in, or additions to, the parameters under which the Act 160 Bonds may be issued, if such changes or additions are required by market conditions or other factors

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market conditions which they describe as being "volatile." Applicants further contend that prevailing interest rates have increased significantly in recent periods and that it is unknown what the interest rate environment may be at the time of the sale. See Applicants' letter dated and filed December 18, 2008.

after the parameters are approved as requested in the Application:

1. HECO, on its behalf and for HELCO and MECO, will file with the commission, and deliver to the Consumer Advocate, a letter request in this docket, for expedited approval of the changes in or additions to the parameters under which the Act 160 Bonds may be issued. This letter would set forth only the revised and/or additional parameters for which commission approval is being sought, and would also include any significant variation from what is described in the Application with respect to the principal terms and conditions of the financing. If Applicants request a sale of adjustable rate bonds under a multi-modal indenture, the letter will also include Applicants' request for the appropriate approvals from the commission of the procedures that would be followed in the event Applicants wished to change the interest rate mode.
2. The letter request will 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 (since they have already been provided in this docket).
3. Upon receipt of the commission's expedited approval, each of the Applicants shall be authorized to participate in the proposed sale of Revenue Bonds, i.e., to borrow the proceeds from the sale of the revenue bonds, to issue their respective Notes to the Department or its Trustee, and to execute and deliver the Financing Documents and any and all other documents that are necessary or desirable in order to conclude the proposed financing, so long as the financing falls within the approved revised and/or additional parameters and those parameters previously approved by the commission (and for which revision is not sought).

Applicant asserts that the proposed expedited procedure is similar to the procedure approved in previous commission dockets.<sup>29</sup>

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<sup>29</sup>See Application at 35-36.

Applicants' Reports to the Commission

Applicants state that they will report to the commission:

1. The results of each of the Revenue Bond Financings as soon as practicable after they are concluded and that this report will include, with respect to each financings: (a) a statement of the actual expenses incurred; (b) a copy of the final official statement; and (c) a copy of the bond counsel's opinion to the effect that interest on the Revenue Bonds is exempt from federal and Hawaii income taxes under the laws and regulations in effect at the time the Revenue Bonds are issued.
2. Within sixty days after each sale of Revenue Bonds under Act 160, a report containing information required by HRS § 39A-208(b).
3. A copy of the principal Financing Documents (as listed in Part VIII of the Application) and other final documents used in the Revenue Bond Financings, upon commission request.<sup>30</sup>

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<sup>30</sup>Applicants state that Act 160 does not require reports to the Legislature regarding Revenue Bonds issued under the act; thus, no annual reports will be submitted unless requested by the commission.

B.

Consumer Advocate's Position

On June 4, 2009, the Consumer Advocate filed its Statement of Position ("Statement of Position") informing the commission that it does not object to approval of the Application, provided that the commission adopt its recommendation regarding Applicants' interest rate parameter.

According to the Consumer Advocate, there appears to be a need for the funds that would be generated from the proposed financings. The Consumer Advocate notes that, aside from traditional capital expenditures needed to meet customer demand; Applicants have capital expenditure requirements to comply with the Hawaii Clean Energy Initiative ("HCEI"), which was signed on October 20, 2008. According to the Consumer Advocate, "[b]ased on historical capital expenditure patterns coupled with the additional requirements of the HCEI, it does appear that [Applicants'] internal sources of funds may be insufficient to meet near term financing requirements and that there is a need for external financing."<sup>31</sup> In addition, the Consumer Advocate asserts that it is reasonable for Applicants to seek approval of the issuance of Revenue Bonds instead of taxable debt and that financing through Revenue Bonds appears "to be the most cost effective choice" for Applicants to meet their current financial needs.<sup>32</sup>

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<sup>31</sup>See Statement of Position at 6.

<sup>32</sup>Id. at 17.

With respect to approval and certification of the proposed energy projects, the Consumer Advocate first states that it does not oppose approval of the identified projects for the purpose of meeting the requirements of Act 160. This position is based on the Consumer Advocate's understanding that the project approvals being sought in this application are limited to commission approval of the use of the Revenue Bond proceeds to finance the construction of the identified projects on Applicants' Project Lists.<sup>33</sup> The Consumer Advocate also contends that all of the projects on Applicants' Project Lists appear to be projects for the local furnishing of electric energy and, thus, the Consumer Advocate does not oppose commission certification of them as such. Further, the Consumer Advocate states that it does not object to Applicants' proposal to obtain project approvals under Act 160 and certification under HRS § 39A-191(2) for supplemental projects through a filing of a motion in this docket. The Consumer Advocate notes that this position is consistent with its position in Docket No. 99-0120.

With respect to the approvals and authorizations relevant to the Revenue Bond Financings, the Consumer Advocate states that the proposed debt issuance will, potentially, have a significant impact on Applicants' capital structure, especially

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<sup>33</sup>The Consumer Advocate states that "our non-opposition should not be construed as a relinquishment of our right to take issue with the prudence of a decision to proceed with the commitment of funds for the projects" which may arising during a review of appropriate applications under Rule 2.3.g.2 or in a rate case. See Statement of Position at 8.

for HECO and HELCO;<sup>34</sup> however, according to the Consumer Advocate "the projected interest coverage ratios for each company appears to be fairly consistent."<sup>35</sup> Recognizing that if Applicants are allowed to issue the proposed Revenue Bonds (as opposed to public offerings), a lower cost of debt should be achieved, the Consumer Advocate states that it "does not object to the Commission approval of the requested relief items in this category" including but not limited to each of the Applicants, alone or in combination with one or both of the others, to participate with the Department in one or more Revenue Bond Financings up to the total amount authorized by Act 160.<sup>36</sup>

Since the Consumer Advocate does not oppose commission approval of issuance of the Revenue Bonds, it also does not object to commission approval of Applicants' request to participate in the sale of Revenue Bonds under Act 160.<sup>37</sup> However, while stating that it generally does not object to the proposed parameters for the Revenue Bond Financings under Act 160, which according to the Consumer Advocate are similar to past requests, the Consumer Advocate states that it has "serious concerns" with Applicants' request to increase its interest rate request from a fixed interest rate not to exceed 8.0% to a fixed

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<sup>34</sup>According to the Consumer Advocate, if the entire amounts of the Revenue Bonds authorized are issued to HECO, HELCO and MECO, i.e., \$260 million, \$115 million, and \$25 million, respectively, the additional debt represents approximately 19.2%, 26.2%, and 6.3% of the existing total capitalization for HECO, HELCO, and MECO, respectively. See Statement of Position at 12.

<sup>35</sup>Id. at 12.

<sup>36</sup>Id.

<sup>37</sup>Id. at 13.

interest rate not to exceed 11.0%. According to the Consumer Advocate, debt issuance with an interest rate approaching 11.0% does not appear reasonable. The Consumer Advocate argues that recent estimates provided in Applicants' analysis of taxable debt as compared to Revenue Bonds support a conclusion that an interest rate of 11.0% is excessive.<sup>38</sup> Further, the Consumer Advocate states that "authorizing an upper end of 11.0% for debt appears quite unreasonable when considering some of the recent cost of common equity authorized by and submitted for consideration by the Commission."<sup>39</sup> Contending that Applicants have not clearly met their burden of proof to support the need to have the upper interest rate parameter set at 11.0%, the Consumer Advocate recommends that it be disallowed. Instead, the Consumer Advocate states that the commission should allow Applicants to have an upper interest rate parameter of 8.0%. The Consumer Advocate also states that if prevailing market conditions require a higher interest rate, Applicants should file a motion, with the applicable support both for the need to issue debt, at that time, as well as support that the higher parameter is necessary.

Finally, with respect to Applicants' request for a procedure for expedited approval of additions to or changes in financing parameters, the Consumer Advocate does not object to the procedure proposed by Applicants. The Consumer Advocate states that the proposed procedure appears to be similar to

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<sup>38</sup>Id. at 14.

<sup>39</sup>Id.

procedures that were approved by the commission in prior financing dockets.

C.

Applicants' Response

On June 8, 2009, Applicants filed a letter ("Response") indicating that they will not be submitting a reply statement of position to the Consumer Advocate's Statement of Position. In their Response, Applicants: (1) acknowledged the Consumer Advocate's position on the Application and its recommendation with respect to the interest rate parameter; and (2) notified the commission that the proceeding is ready for decision-making. Applicants also reiterated their request, initially made through a letter filed May 26, 2009, for a decision in this proceeding by June 30, 2009.

II.

Discussion

A.

Approval of Projects

Section 2 of Act 160 provides that "commission approval shall be required for any project financed by the issuance of special purpose revenue bonds under this Act." Applicants' Project Lists, included in the Application as Exhibits 3, describe the energy projects that Applicants proposed to finance, in whole or part, with the proceeds from the sale of the Revenue Bonds issued pursuant to Act 160. Applicants request commission

approval of the energy projects identified in the Project Lists for each of the Applicants, pursuant to Act 160.

The estimated cost of the projects listed on the Project Lists, based on each Applicants' project forecasts, is approximately \$164 million for HECO, \$92 million for HELCO, and \$33 million for MECO. Except for MECO, these amounts are lower than the \$260 million for HECO and \$115 million for HELCO which Act 160 authorizes to be raised by the sale of Revenue Bonds.

Consistent with prior revenue bond financing dockets, the commission will not consider whether any particular project on Applicants' Project Lists comply with HRS §§ 269-27.5, 269-27.6 or Rule 2.3.g.2. Instead, the commission's review is limited to a determination of whether the projects on the Project Lists are for a purpose enumerated in HRS § 269-17, which states, in part:

A public utility corporation may, on securing the prior approval of the public utilities commission, and not otherwise, issue stocks and stock certificates, bonds, notes, and other evidences of indebtedness, payable at periods of more than twelve months after the date thereof, for the following purposes and no other, namely: 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 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. . . . 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.

In approving an application filed under HRS § 269-17, the commission must find that the proposed purpose of the transaction will not have a material adverse effect on a company's public utility operations.<sup>40</sup>

Here, the use of the proceeds of the Revenue Bonds for the projects described in Applicants' Project Lists is consistent with HRS § 269-17, and would not appear to have a material adverse effect on Applicants' public utility operations. The commission recognizes Applicants' desire to reduce their currently high levels of short term debt through the proposed Revenue Bond Financings, which should not adversely affect Applicants' public utility operations. Moreover, Applicants' participation in the proposed financial transactions, if deemed desirable and market conditions are favorable, should aid in Applicants' liquidity and reduce their interest rate risk, which should ultimately benefit Applicants' ratepayers. Further, the

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<sup>40</sup>See In re Hawaiian Electric Company, Inc., Maui Electric Company, Limited, and Hawaii Electric Light Company, Inc., Docket No. 00-0120, Decision and Order No. 18151, filed on October 20, 2000, at 10-11; In re Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited, Docket No. 04-0303, Decision and Order No. 21497, filed on December 17, 2004, at 12.

commission notes that the energy projects on HECO and HELCO's Project Lists (i.e., CIP1 and ST-7, respectively)<sup>41</sup> appear to be specifically authorized by Act 160 for financing from the proceeds of Revenue Bonds under Act 160, subject to commission approval.<sup>42</sup>

Based on the foregoing, the commission concludes that the energy projects on Applicants' Project Lists should be approved.

B.

Certification of Projects

Under HRS § 39A-191(2), the commission must certify that the facilities for each energy project or multi-project program to be financed with the bond proceeds are for the "local furnishing of electric energy[.]"

Upon a review of the projects listed on Applicants' Project Lists, the commission finds that the projects are facilities for the "local furnishing of electric energy[.]" as that term is defined by HRS § 39A-191(3). Specifically, the commission finds that the facilities consist of property and land that are or will be: (1) depreciable; (2) used to produce,

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<sup>41</sup>See Application at 16; HECO and HELCO's Exhibits 3.

<sup>42</sup>Section 2 of Act 160, in pertinent part, authorizes the Department to issue Revenue Bonds under the act for the benefit of the Applicants "to continue multi-project capital improvement programs, including the acquisition of land, facilities used to produce electricity (including one new generating unit on the island of Oahu that is planned to run on one hundred per cent biofuel but is also capable of burning fossil fuel, and one new heat recovery steam generator on the island of Hawaii that will run off of waste heat and be part of a dual train combined-cycle unit with two existing fossil fuel units), . . . ."

collect, generate, transmit, store, distribute, or convey electric energy; (3) used in the trade or business of furnishing electric energy; and (4) part of the systems providing service to the general public of the City and County of Honolulu, the County of Hawaii, or the County of Maui.

Thus, the commission concludes that the projects listed on the Project Lists should be certified as being for the local furnishing of electric energy.

C.

Supplemental Project Approval and Certification

Applicants request commission approval to obtain approval of supplemental projects (required under Act 160), and certification that these projects are for the local furnishing of electric energy, in accordance with HRS § 39A-191(2), by motion. The proposed procedures are described in Part VII of Applicants' Application.

Given that this procedure is similar to the procedure approved in Docket No. 99-0120, the commission finds it appropriate to approve the procedure described in the Application. Thus, the commission concludes that Applicants' request to obtain approval and required certification of the supplemental projects, as described in the Application, should be approved.

D.

General Approvals Related to Revenue Bond Financings

As noted above, Applicants request approval to participate in one or more Revenue Bond Financings of up to \$260 million for HECO, up to \$115 million for HELCO, and up to \$25 million for MECO for a total of \$400 million, which is the entire amount authorized by Act 160. As part of the necessary approvals, Applicants also request approval to carry out the Revenue Bond Financings alone or in combination, and in one or more series. In addition, Applicants seek commission approval to enter into Financing Documents, including the Notes and one or more Loan Agreements (including the HECO Guarantees) needed for the sale by the Department of each series of Revenue Bonds issued under Act 160. Applicants also seek approval of the allocation of proceeds, issuance costs, bond insurance, and certain negative covenants. The Consumer Advocate does not object to approval of any of these provisions.

Upon review, the commission finds that the approvals related to the Revenue Bond Financings requested by Applicants are appropriate. Moreover, as determined above, the use of the proceeds from the sale of Revenue Bonds under Act 160 is consistent with the provisions of HRS § 269-17, and would not appear to have a material adverse effect on Applicants' public utility operations.

Accordingly, the commission concludes that the proposed transactions related to the Revenue Bond Financings, as

contemplated in the Application, should be approved, as specified in Section III, below.

E.

Approval to Participate in Sale of Act 160 Bonds

In connection with its request to participate in the issuance and sale of Act 160 Bonds, Applicants request that the commission approve certain parameters within which Act 160 Bonds and the related Notes may be issued. The Consumer Advocate did not object to any of these parameters with the exception of the fixed interest rate, which the Consumer Advocate argues should be limited to a fixed interest rate not to exceed 8.0%, as opposed to the 11.0% requested by Applicants. According to the Consumer Advocate, an issuance of debt with an interest rate approaching 11.0% is not reasonable "[w]hen considering the recent estimates provided in [Applicants'] analysis of taxable debt as compared to revenue bonds."<sup>43</sup> The Consumer Advocate contends that "authorizing an upper end of 11.0% for debt appears quite unreasonable when considering some of the recent cost of common equity authorized by and submitted for consideration by the Commission."<sup>44</sup> The Consumer Advocate argues that Applicants have not met their burden of proof to support the need for a fixed interest rate upper parameter set at 11.0%, and thus the requested parameter should not be allowed. Applicants do not dispute or substantively address the Consumer Advocate's

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<sup>43</sup>See Statement of Position at 14.

<sup>44</sup>Id.

recommendation for a fixed interest rate not to exceed 8.0%, as opposed to the amended 11.0% requested by Applicants.

Upon review, the commission finds the parameters for the sale of Revenue Bonds as proposed by Applicants to be generally reasonable, except for Applicants' amended request for a fixed interest rate upper parameter of 11.0%. Applicants failed to provide sufficient support for their request for a fixed 11.0% interest rate upper parameter. In addition, a fixed interest rate upper parameter of 11.0% appears excessive and unreasonable under the circumstances for the reasons articulated by the Consumer Advocate.

Based on the foregoing, the commission concludes that the parameters for the sale of Act 160 Bonds, as proposed by Applicants, should be approved; except that the interest rate parameter for the financing of the bonds shall be a fixed interest rate not to exceed 8.0%, unless approved otherwise by the commission. Should Applicants need to amend any parameters due to market conditions or other factors, Applicants may do so under the expedited procedure proposed by Applicants, as discussed below.

F.

Expedited Approval Procedure

Applicants request that the commission approve the use of the expedited approval procedure described in Section X of the Application for any changes in, or additions to, the parameters under which Act 160 Bonds may be issued, if such changes are

required by market conditions or other factors after the parameters are approved. Since this expedited approval procedure is similar to the procedure approved in previous commission dockets, the commission finds it appropriate to approve the expedited approval procedure described in the Application. Accordingly, the commission concludes that the procedure proposed by Applicants in Section X of the Application should be approved.

G.

Other Relief

In their Application, Applicants also requested "such other and further relief as may be necessary or desirable in order to enable Applicants to carry out the Revenue Bond Financings and related programs as described in this Application."<sup>45</sup> While no concern was raised over this provision, the wording of a similar provision was an issue in Docket No. 05-0330.<sup>46</sup> In that proceeding, the Parties ultimately agreed to the inclusion of following language: "Applicants are granted such further relief as may be necessary or desirable in order to enable Applicants to carry out the revenue bond financings described in the Amended Application provided that Applicants notify the Commission of the nature of such relief prior to

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<sup>45</sup>See Application at 51.

<sup>46</sup>The parties to Docket No. 05-0330 were the Applicants and the Consumer Advocate, i.e., the Parties. See In re Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Limited, Docket No. 05-0330, Decision and Order No. 23292, filed on March 9, 2007, at 4.

taking any actions thereon."<sup>47</sup> The Parties informed the commission in Docket No. 05-0330 that a similar provision was included in Docket No. 99-0120.<sup>48</sup> The commission, in Docket No. 05-0330, granted Applicants "such further authority as may be necessary or desirable in order to enable Applicants to carry out the revenue bond financings described in the Amended Application; provided that Applicants notify the commission of the nature and extent of such further necessary or desirable authority prior to exercising such authority and taking any actions based thereon."<sup>49</sup>

Likewise, given the above, the commission finds it reasonable in this docket to grant Applicants such further authority as may be necessary or desirable in order to enable Applicants to carry out the Revenue Bond Financings described in the Application; provided that Applicants notify the commission of the nature and extent of such further necessary or desirable authority prior to exercising such authority and taking any actions based thereon.

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<sup>47</sup>Id. at 41.

<sup>48</sup>Id.

<sup>49</sup>Id.

III.

Orders

THE COMMISSION ORDERS:

1. The energy projects listed in Applicants' Project Lists, attached to the Application as Exhibits 3, are approved pursuant to Act 160.<sup>50</sup>

2. The energy projects listed in Applicants' Project Lists, attached as Exhibits 3 to the Application, are certified as being for the local furnishing of electric energy, in accordance with HRS § 39A-191(2).<sup>51</sup>

3. Applicants are each authorized to obtain, by motion, approval of supplemental projects (required under Act 160), and certification that these project are for the local furnishing of electric energy, in accordance with HRS § 39A-191(2), as requested in the Application.

4. Applicants are authorized to carry out each of the Revenue Bond Financings either alone or combined in a single offering with one or more Non-refunding Bond financings under future legislative authorizations, and/or one or more refunding revenue bond financings.

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<sup>50</sup>Commission approval in this docket of Applicants' energy projects on their Project Lists is only with respect to the requirements of Act 160 and HRS § 269-17. As set forth in the Application, Applicants did not request commission review and approval of the energy projects under Rule 2.3.g.2 and HRS §§ 269-27.5 and 269-27.6, as applicable, and, thus, none were conducted nor granted.

<sup>51</sup>Commission certification of the energy projects listed in Applicants' Project Lists is solely with respect to HRS § 39A-191(2), and is not with respect to any other matters under the commission's purview.

5. Each Revenue Bond Financing may consist of one or more series in a single offering and more than one offering.

6. HECO, HELCO, and MECO are each authorized, in their discretion, to borrow from the Department or its trustee from time to time in one or more increments, up to a total of \$260 million, \$115 million, and \$25 million, respectively, representing proceeds from one or more sales of Revenue Bonds by the Department authorized by Act 160, within the parameters approved by the commission.

7. Applicants are each authorized, in their discretion, to participate in the Revenue Bond Financings, in one or more issuances and sales, and in one or more series, provided that the terms of the Act 160 Bonds fall within the parameters initially requested by Applicants as described in Part IX of the Application. The interest rate parameter for the financing of the Act 160 Bonds shall be a fixed interest rate not to exceed 8.0%, unless approved otherwise by the commission.

8. Applicants are each authorized to enter into one or more Loan Agreements covering borrowings in connection with the Revenue Bond Financings (and providing for the payment by Applicants of all underwriting commissions and other expenses of each contemplated financings), in substantially the form previously entered into in connection with any previous series of special purpose revenue bonds or refunding special purpose revenue bonds, with such changes as are necessary or desirable including changes that may be necessary if it is determined (a) to carry out the Revenue Bond Financings in more than one

series and/or more than one offering, (b) to combine in one offering of one or more series of bonds issued under Act 160, other non-refunding bonds and/or refunding bonds, and/or (c) to modify the final terms of any bond insurance arrangements, if applicable.

9. HECO, HELCO and MECO are each authorized, in their discretion, to issue their respective Notes to the Department, or to the bond trustee, in one or more increments up to a total amount not to exceed \$260 million, \$115 million, and \$25 million, respectively, in connection with the borrowings by Applicants of the proceeds from the sale (or sales) of Revenue Bonds authorized by Act 160 and issued by the Department from time to time (such Notes in total to correspond in principal amount, interest rate, maturity and redemption provisions to the related revenue bonds).

10. Applicants are each authorized, in their discretion, to execute and deliver any and all Financing Documents that are necessary or desirable in order to conclude any or all of the proposed Revenue Bond Financings.

11. HECO is authorized, in its discretion, in connection with the borrowings by HELCO and MECO from the Department or the trustee of a portion of the proceeds of the Revenue Bonds authorized by Act 160, to guarantee the obligations of HELCO and MECO, including under its Loan Agreement(s) and their respective Note(s) and with respect to any of their other obligations.

12. Applicants are authorized to purchase bond insurance for one or more series of Revenue Bonds issued under

Act 160, and to pay the related up-front and any future insurance premiums, if the sale or sales of Revenue Bonds can be concluded on a timely basis with the purchase of insurance, and if, in the judgment of Applicants, 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, Series 2003B, Series 2005A, Series 2007A, and Series 2007B revenue bonds).

13. Applicants are authorized, in the event any of the Revenue Bond Financings are to be insured, to enter into any insurance agreements or other agreements that may be required to obtain bond 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 proposed Revenue Bond Financing on an insured basis.

14. HECO is authorized to enter into one or more negative covenant agreements with the bond insurer in connection with each Revenue Bond Financing, should bond insurance be purchased and should a negative covenant be required, which would 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 debt 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.

15. Mandatory redemption and loan repayment provisions are authorized, including but not limited to provisions that in substance provide for a mandatory redemption of the bonds upon written notice from the bond insurer to the trustee for the bonds that the bonds are to be called for redemption because (a) (i) HECO has reorganized or transferred a substantial portion of its assets, (ii) the reorganization or transfer has resulted in HECO no longer being engaged in the business of the distribution of electricity in the City and County of Honolulu, (iii) the obligations of HECO under its Loan Agreement and Note have neither been assumed nor guaranteed by the resulting entity that is thereafter to engage in the distribution of electricity in the City and County of Honolulu, and (iv) the bond insurer has not consented to such reorganization or transfer; or (b) HECO has failed to pay to the bond insurer any insurance premiums in respect of the bond insurance that are due under a deferred premium arrangement.

16. Applicants are each authorized to follow the procedure specified in Part X of the Application in order to obtain expedited approval from the commission for any changes in or additions to the parameters under which the Act 160 Bonds may

be issued, if such changes or additions are required after the parameters are approved as requested in the Application.

17. Applicants are each authorized to use the proceeds from each Revenue Bond Financing for the purposes set forth in the Application.

18. As soon as practicable, and within the time periods specified, if any, Applicants shall file with the commission and the Consumer Advocate the reports described in Part XIV of the Application, and also provide copies of the principal Financing Documents and all other final documents used in the Revenue Bond Financings.

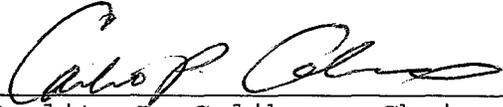
19. Applicants are granted such further authority as may be necessary or desirable in order to enable Applicants to carry out the Revenue Bond Financings described in the Application; provided that Applicants notify the commission of the nature and extent of such further necessary or desirable authority prior to exercising such authority and taking any actions based thereon.

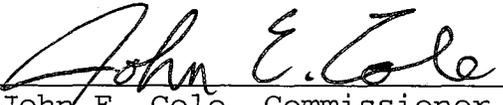
20. Subject to the actions that are discretionary, Applicants shall conform to all of the commission's orders set forth above. Failure to adhere to the commission's orders may result in further regulatory actions as authorized by law.

DONE at Honolulu, Hawaii

JUN 29 2009

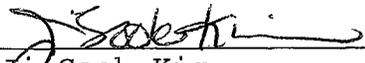
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Ji Sook Kim  
Commission Counsel

2008-0281.cp

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  
SENIOR VICE PRESIDENT  
FINANCE AND ADMINISTRATION  
HAWAIIAN ELECTRIC COMPANY, INC.  
FINANCIAL VICE PRESIDENT  
HAWAII ELECTRIC LIGHT COMPANY, INC.  
MAUI ELECTRIC COMPANY, LIMITED  
P.O. Box 2750  
Honolulu, HI 96840-0001

DARCY L. ENDO-OMOTO  
VICE PRESIDENT  
GOVERNMENT AND COMMUNITY AFFAIRS  
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  
1099 Alakea Street, Suite 1800  
Honolulu, HI 96813

Attorneys for HECO, HELCO, and MECO