

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 the Issuance and)
Purchase of Common Stock.)

DOCKET NO. 2009-0089

DECISION AND ORDER

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Docket No. 2009-0089

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 approval of the issuance and sale of HECO common stock to Hawaiian Electric Industries, Inc. ("HEI") in an amount up to \$120 million, the issuance and sale of HELCO common stock to HECO in an amount up to \$30 million, the issuance and sale of MECO common stock to HECO in an amount up to \$7 million, and the purchase of such HELCO and MECO common stock by HECO, to the extent that any such issuances and sales do not result in their respective company exceeding the percentage of common equity used to calculate their capital structure approved for ratemaking purposes, as set forth in each respective company's most recent rate case.

I.

Background

Applicants are Hawaii companies 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 HEI, is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Oahu in the State of Hawaii ("State").¹ HELCO, a wholly-owned subsidiary of HECO, is engaged in the production, purchase, transmission, distribution, and sale of electricity on the island of Hawaii.² 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.³

A.

Application

By application filed on April 20, 2009, as amended on April 22, 2009 ("Application"),⁴ Applicants request the approvals

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

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

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

⁴By letter dated April 22, 2009, Applicants filed a revised page 17 to correct HECO's common stock par value price per share from \$10 to \$6 2/3 and requested that the commission replace this page of the Application.

necessary for the issuance and sale of HECO common stock to HEI in an amount up to \$120 million, the issuance and sale of HELCO common stock to HECO in an amount up to \$30 million, the issuance and sale of MECO common stock to HECO in an amount up to \$7 million, and the purchase of such HELCO and MECO common stock by HECO (collectively, the "Proposed Transactions").⁵ Applicants request commission approval of the Proposed Transactions under HRS §§ 269-17 and 269-18, and subchapter 9 of HAR Chapter 6-61.⁶

For the Proposed Transactions, Applicants state that the purchase price per share of common stock will be the book value per share of each of Applicants' common stock on the last day of the month prior to issuance. According to Applicants, this price methodology was previously used by Applicants, and adopted in the Board of Directors' resolutions approving the investments. In addition, Applicants state that there should be minimal expenses associated with the issuances of common stock as contemplated in the Application. Applicants also represent that

⁵Applicants 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 proceedings 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 hereafter collectively referred to as the "Parties."

⁶On April 24, 2009, the Parties submitted their Stipulation for Protective Order, which the commission approved on April 29, 2009 ("Protective Order"). Certain exhibits in the Application were filed under the approved Protective Order.

"[a]s of December 31, 2008, the book value per share of common stock for HECO was \$92.84, for HELCO was \$101.69 and for MECO was \$136.09."⁷

In exchange for the common stocks, Applicants state that they shall receive (HECO from HEI and HELCO and MECO from HECO) as consideration: cash; and for HECO, the cancellation of short-term debt owed by HECO to HEI; for HELCO and MECO, the cancellation of short-term debt owed by HELCO and MECO to HECO;⁸ or a combination of cash and the cancellation of such indebtedness (provided that the proceeds of any such cancelled debt had been used to finance or refinance capital expenditures).

The Proposed Transactions, according to Applicants, are a part of their respective financing plans. Applicants state that the sale of their respective common stock "will provide funds to finance capital expenditure programs and/or to repay portions of HECO's, HELCO's and MECO's short-term borrowings used to finance or refinance capital expenditure projects."⁹ Thus, Applicants contend that the issuance of common stock, as proposed by Applicants, are for purposes that are permitted under

⁷See Application at 7.

⁸According to Applicants, HEI loans money to HECO and HECO loans money to HELCO and MECO under a "master note" concept, under which Applicants borrow money short-term when they have cash needs and pay back the borrowings within 364 days or less. Pages 8-9 of the Application provide additional details regarding Applicants' short-term borrowings.

⁹See Application at 7.

HRS § 269-17. They further represent that the Proposed Transactions will not have material adverse effects on any of Applicants' public utility operations.

B.

Consumer Advocate's Position

On August 10, 2009, the Consumer Advocate filed its Statement of Position ("CA's SOP") informing the commission that it does not object to approval of the Application; provided that the commission adopts its recommended reporting requirement.

The Consumer Advocate states that the Proposed Transactions will: (1) provide Applicants with the capital necessary to fund planned capital expenditures; and (2) assist in reducing certain financial risk factors which, if not addressed, could result in downgrades of Applicants' credit ratings, and in turn, could adversely impact consumers. According to the Consumer Advocate, Applicants appear to need additional capital.¹⁰ In addition, the Consumer Advocate states that downgrading of Applicants' credit ratings would adversely impact their ability to access the securities market and generally increase the overall cost of capital for Applicants on a going forward basis. Such action, according to the Consumer Advocate, would "also have an adverse impact on [] customers since a higher cost of capital would mean higher rates in future rate cases."¹¹

¹⁰See CA's SOP at 5-6.

¹¹Id. at 7.

The Consumer Advocate contends that allowing Applicants to issue the proposed equity will facilitate meeting their target common equity ratio of 58%, "which should help to reduce the pressures that are threatening to support a downgrade of [Applicants'] credit rating."¹² However, the Consumer Advocate states that its position herein is not meant to endorse 58% as the value that should be used in other proceedings. The Consumer Advocate also reserves the right to recommend a different value for the common equity ratio in other proceedings, as appropriate and supportable.

In addition, the Consumer Advocate asserts that the Proposed Transactions are reasonable and in the public interest. According to the Consumer Advocate, it has confirmed that HECO does not intend to use the proceeds from the Proposed Transactions to fund the acquisition of HELCO and MECO's common stock, which is prohibited under HRS § 269-17. The Consumer Advocate also asserts that the Proposed Transactions should not adversely affect Applicants' customers. Moreover, the Consumer Advocate contends that "allowing [Applicants] to issue common equity now, even after the Commission has already approved the issuance of special purpose revenue bonds in Docket No. 2008-0281, will provide [Applicants] flexibility in deciding whether to rely on available internal sources, short-term

¹²Id. at 9.

issuances, or the funds from the long-term debt or equity issuances."¹³

The Consumer Advocate, however, recommends that the commission require the appropriate reports to be filed with the commission upon conclusion of the Proposed Transactions, with a copy submitted to the Consumer Advocate. According to the Consumer Advocate, "[t]hese reports should include the price paid per share, the amount of shares issued, the itemized expenses associated with the sales of the stock, the amounts allocated to each company, and the basis for the allocation."¹⁴

C.

Applicants' Response

On August 18, 2009, Applicants filed a letter ("Response") stating that they will not be submitting information requests or a Reply Statement of Position to the CA's SOP. In their Response, Applicants: (1) acknowledge the Consumer Advocate's position on the Application; and (2) notify the commission that the proceeding is ready for decision-making. Applicants also reiterate their request, initially made through a letter filed on May 26, 2009, for a decision in this proceeding by October 30, 2009.

¹³Id. at 11-12.

¹⁴Id. at 15.

II.

Discussion

HRS § 269-17 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. . . . 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. 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 (emphasis added).

As quoted above, if the purpose of issuing securities is to acquire property or if it is to finance new or additional facilities or services, under HRS § 269-17, the securities may not be issued if the commission finds that the proposed purpose of the transaction will have a material adverse effect on a company's public utility operations. Moreover, under HRS § 269-18, prior commission approval is required before a public utility corporation purchases or acquires any part of the capital stock of any other public utility corporation, organized or existing under the laws of the State.

In this case, the purpose of the Proposed Transactions would be to finance capital expenditure programs and to repay portions of HECO, HELCO and MECO's short-term borrowings, which were previously used to finance or refinance capital expenditure projects. There is nothing in the record that supports a determination that the proposed purposes of the transaction will have a material adverse effect on public utility's operations. In addition, the proceeds from the Proposed Transactions are contemplated and for permitted purposes under HRS § 269-17. Thus, it does not appear that the Proposed Transactions would have a material adverse effect on Applicants' public utility operations.¹⁵

¹⁵While Applicants are requesting the ability to issue up to \$120 million for HECO, \$30 million for HELCO, and \$7 million for MECO, these identified aggregate amounts are upper parameters and were requested in order to provide each company some flexibility as to the amount of equity actually issued. Applicants state that they intend to issue less than the identified amounts. See Applicants' Response to CA-IR-3, filed on July 20, 2009.

Another purpose of the Proposed Transactions is to improve and manage the Applicants' capital structures to maintain a ratio of combined preferred stock and common equity to total capitalization of approximately 58% for book purposes.¹⁶ Previously, Applicants managed their capital structures by targeting year-end ratios of common equity to total capitalization of about 54% for book purposes.¹⁷ This decision to increase their equity capital structure targets appears to be an attempt by Applicants to improve their overall financial structure by increasing equity and reducing debt, to reduce investors' financial risk and maintain Applicants' credit ratings in the financial markets. According to Applicants, "[i]ncreasing the amount of equity in the capital structure helps to decrease [Applicants'] financial risk by reducing the total debt to total capitalization ratio (more equity, less debt)."¹⁸ Specifically, with respect to HECO, Applicants state that this capital structure has been established to "at least" maintain HECO's existing credit ratings.

The Consumer Advocate recognized that increasing the relative amount of equity in a company's capital structure is intended to reduce the company's risk since there would be relatively less debt in its capital structure.¹⁹ This could be at

¹⁶See Application at 5-6.

¹⁷Id. at 5.

¹⁸Id. at 6.

¹⁹See CA's SOP at 8-9.

the expense; however, of increasing the company's overall cost of capital since the cost of common equity is generally higher than the cost of debt, which could result in higher rates.²⁰

Thus, the Consumer Advocate recognized the need to address concerns of the credit markets to avoid possible negative credit evaluations, while recognizing the need to balance that against the resulting higher cost of equity, which could be passed on to ratepayers.²¹ The commission also understands that Applicants are attempting to reduce their financial risk by increasing their equity position through the Proposed Transactions. We also, however, recognize the tension between increasing equity in their capital structure and controlling their overall cost of capital. Nonetheless, given the recognized need to address potential negative evaluations from the credit markets, the commission finds that the Proposed Transactions are reasonable and in the public interest. However, as articulated by the Consumer Advocate, commission approval of the Proposed Transactions is not necessarily an endorsement of 58% as the appropriate level of common equity that should be used or adopted for other proceedings involving the Applicants or any other parties. The appropriate capital structure, which is not an issue in this proceeding, is determined under the particular facts and circumstances of each individual case, and may depend

²⁰Id. at 9.

²¹Id.

on several different variables.²² As capital structure is not at issue, the commission finds it appropriate to limit the Proposed Transactions to an amount not to exceed the percentage of common equity used to calculate the capital structure approved for ratemaking purposes, as set forth in each respective company's most recent rate case.

In addition, the commission finds the Consumer Advocate's recommended reporting requirement to be reasonable. The commission notes that Applicants state that they will report the results of the Proposed Transactions to the commission as soon as practicable.²³

Based on the above, the commission concludes that the Proposed Transactions, as contemplated in the Application, should be approved, as specified in Section III, below. In addition, the commission concludes that the Consumer Advocate's recommended reporting requirement should be adopted.

²²The Consumer Advocate also raised a concern about the impact of the commission's pending decoupling docket, which could "provide cost recovery of items on an accelerated basis, which could potentially increase the internal sources of funds as well as the targeted capital structure ratios" rendering "moot" the need for the relief requested in this docket. While Applicants reject the contention that the decoupling docket will have any impact on the targeted capitalization ratios, the commission agrees with the Consumer Advocate that a decision on the effect of decoupling would be premature, as the commission has yet to issue a decision in the decoupling proceeding.

²³See Application at 17.

III.

Orders

THE COMMISSION ORDERS:

1. Applicants' request that HECO be permitted to issue and sell an aggregate amount up to \$120 million of its common stock to HEI under the terms and conditions, and for the purposes set forth in the Application, is approved, to the extent that any such issuance and sale does not result in HECO exceeding the percentage of common equity used to calculate the capital structure approved for ratemaking purposes, as set forth in HECO's most recent rate case.

2. Applicants' request that HELCO be permitted to issue and sell an aggregate amount up to \$30 million of its common stock to HECO under the terms and conditions, and for the purposes set forth in the Application, is approved, to the extent that any such issuance and sale does not result in HELCO exceeding the percentage of common equity used to calculate the capital structure approved for ratemaking purposes, as set forth in HELCO's most recent rate case.

3. Applicants' request that MECO be permitted to issue and sell an aggregate amount up to \$7 million of its common stock to HECO under the terms and conditions, and for the purposes set forth in the Application, is approved, to the extent that any such issuance and sale does not result in MECO exceeding the percentage of common equity used to calculate the capital structure approved for ratemaking purposes, as set forth in MECO's most recent rate case.

4. Applicants' request that HECO be permitted to purchase up to \$30 million of HELCO common stock and up to \$7 million of MECO common stock, as described in the Application, is approved, provided that any such purchases do not result in HELCO and MECO exceeding the percentage of common equity used to calculate their capital structure approved for ratemaking purposes, as set forth in each respective company's most recent rate case.

5. Applicants shall report to the commission the results of the Proposed Transactions (including the use of all proceeds) as soon as practicable after they are concluded, and provide a copy of the same on the Consumer Advocate. Such a report (or reports) should contain, at minimum, the information described in Section I.B of this Decision and Order.

6. Upon Applicants' compliance with ordering paragraph no. 5, above, this docket will be deemed closed unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii OCT 22 2009.

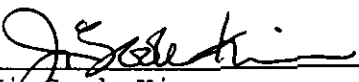
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2009-0089.laa

CERTIFICATE OF SERVICE

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

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