BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of)) HAWAIIAN ELECTRIC COMPANY, INC.)) For Approval of a License at the) Pearl City Power Tower with) T-Mobile West Corporation.))	DOCKET NO. 2006-0451

DECISION AND ORDER NO. 23278

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

Filed Feb. 27, 2007

At 12 o'clock P .M.

Karen Higashi

Chief Clerk of the Commission

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

BEFORE THE PUBLIC UTILITIES COMMISSION

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In the Matter of the Application of)) HAWAIIAN ELECTRIC COMPANY, INC.)) For Approval of a License at the) Pearl City Power Tower with) T-Mobile West Corporation.))	Docket No. 2006-0451 Decision and Order No. 23278

DECISION AND ORDER

By this Decision and Order, the commission grants HAWAIIAN ELECTRIC COMPANY, INC.'s ("HECO") request for approval of: 1) the Site License Agreement between HECO and T-Mobile West Corporation ("T-Mobile") for the HECO Tower #6 site in Pearl City, Hawaii ("Pearl City Power Tower") ("License Agreement"), and 2) the Master Agreement for Licensing of Sites between HECO and Western PCS II Corporation (nka, T-Mobile) dated October 31, 1996, as modified by Addendum No. 1 dated December 31, 1997 ("Master Agreement") to the extent the License Agreement is subject to the provisions of the Master Agreement.

I.

Background

A.

HECO

HECO is a Hawaii corporation initially organized under the laws of the Kingdom of Hawaii on or about October 13, 1891. It is a public utility, as defined by Hawaii Revised Statutes

("HRS") § 269-1, engaged in the production, purchase, transmission, distribution and sale of electricity on the island of Oahu.

B.

Application

On November 14, 2006, HECO filed an application requesting commission approval of the License Agreement and the Master Agreement (to the extent the License Agreement is subject to the provisions of the Master Agreement).[1] According to HECO, under the License Agreement, HECO will grant T-Mobile a non-exclusive license for the installation of communications equipment and related facilities at the Pearl City Power Tower, to be used for the transmission and reception of radio communication signals by T-Mobile and for the installation, maintenance, repair or replacement of related facilities, towers, antennas, equipment or buildings, and related activities, in accordance with the Master Agreement.

As described in the Application, T-Mobile would, at its sole cost, install, maintain, and operate its communications facilities at the Pearl City Power Tower. Specifically T-Mobile proposes to install twelve panel antennas, three outdoor

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[1]Application and Certificate of Service filed on November 14, 2006 ("Application"). HECO served a copy of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this docket, pursuant to HRS § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62. On December 7, 2006, the Consumer Advocate filed its Statement of Position informing the commission that it does not object to commission approval of the Application ("Statement of Position").

cabinets, two radio cabinets, one location measuring unit, one microwave antenna, one GPS antenna, and an electrical riser to be placed on approximately 400 square feet of license area on the east side of the site, enclosed by a chain link fence.[2] HECO asserts that "[r]easonable" road maintenance and vegetation management costs to access the Pearl City Power Tower would be shared pro rata by HECO and T-Mobile. Additionally, pursuant to the License Agreement, T-Mobile is required to submit to HECO a Radio Frequency ("RF") Radiation Study prior to the start of construction. If the RF Radiation Study calculations exceed Federal Communications Commission ("FCC") exposure limits, T-Mobile will offer remedies to HECO in accordance with FCC rules and resolutions, to be approved by HECO. Moreover, T-Mobile will submit RF exposure readings at the site within thirty (30) days after construction is complete, any time there is a modification to the site, and as requested by HECO.[3]

The annual license fee to be paid to HECO by T-Mobile, the specific amount of which was submitted under protective order,[4] will increase annually by a percentage equal to the increase in the Consumer Price Index. HECO states that "in no event will the increase exceed 104% of the previous year's

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[2]See Application, Exhibit 1, at 23 (License Agreement, Exhibit C, at 15).

[3]T-Mobile will reduce the RF radiation, or powerdown the equipment, in the event that HECO needs access to the site to maintain its equipment to allow HECO personnel safe access.

[4]The amount of the license fee to be paid to HECO by T-Mobile pursuant to the License Agreement was submitted to the commission under Stipulated Protective Order No. 23253, filed on February 9, 2007.

license fee."[5] In addition to the base license fee, T-Mobile shall pay all taxes, including the general excise tax, public service company tax and public utility commission tax. The term of the License Agreement is for five years, and may be renewed for an additional term of five years upon written notice by T-Mobile and by written agreement between T-Mobile and HECO.

If HECO determines that it requires the T-Mobile site for its service needs, for operating reasons, or for meeting regulatory or other obligations, HECO may terminate the License Agreement on six (6) months prior written notice to T-Mobile. T-Mobile may terminate the License Agreement on thirty (30) days written notice to HECO. In addition, HECO may request relocation of T-Mobile's equipment at the Pearl City Power Tower if HECO reasonably determines that relocation is required. In such instance, HECO will give T-Mobile six months prior written notice, and T-mobile will have the right to propose an alternative site which satisfies its requirements.

HECO maintains that the License Agreement and Master Agreement will not interfere in any way with its ability to provide electric utility service to its customers. T-Mobile's installation of its communications equipment must comply with all applicable laws, rules, orders, ordinances and standards; the installation must be performed by HECO-approved contractors; and T-Mobile's engineering plans and construction schedules must be approved by HECO prior to commencement of construction. In addition, T-Mobile must satisfactorily complete a safety

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[5]Application at 4.

orientation class prior to commencing any work, and must meet other safety requirements and qualifications, as determined by HECO. As additional safeguards, HECO notes that the License Agreement contains broad indemnification provisions in favor of HECO and the Master Agreement contains various insurance requirements.[6]

C.

Consumer Advocate's Statement of Position

On December 7, 2006, the Consumer Advocate filed a Statement of Position in which it states that it does not object to the approval of HECO's Application based on its review of three issues: whether the terms and conditions of the License Agreement and Master Agreement are reasonable; whether the license fee is reasonable; and whether approval of the License Agreement and Master Agreement are in the public interest.

As to the first issue, the Consumer Advocate asserts that the terms and conditions of the License Agreement and Master Agreement are reasonable. According to the Consumer Advocate, the terms and conditions were negotiated and agreed upon by HECO and T-Mobile, appear reasonable and non-discriminatory, and do not appear to negatively impact HECO's ability to provide electric service to its customers.

With respect to the second issue, the Consumer Advocate states that the license fee is reasonable. The Consumer Advocate

[6]See Application, Exhibit 1, at 5; Application, Exhibit II, at 6-8.

notes that the fee was negotiated between HECO and T-Mobile, and that it is higher than the minimum fee established for a "standard site" of $1,000 per month, per site, as set forth in Docket No. 00-0350.[7]

For the third issue, the Consumer Advocate states that the following considerations and factors support a finding that the License Agreement and the Master Agreement are in the public interest:

1. By providing space to T-Mobile, HECO will generate additional revenues, which should reduce the overall revenue requirements in future rate proceedings that are processed during the lease term.[8]
2. The public would benefit from cost reductions resulting from the sharing by HECO and T-Mobile of some of the costs normally incurred to maintain the leased facilities.
3. The public will benefit by limiting the number of poles and towers that might otherwise be erected or constructed to provide the wireless services that T-Mobile offers.

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[7] In re Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc. and Maui Electric Company, Inc., Docket No. 00-0350 (Application filed on September 20, 2000).

[8] The Consumer Advocate adds that it is not advocating for utility companies to actively seek opportunities to earn additional revenues from the use of an asset associated with the provision of utility service, especially if it would lead to the impairment of a utility's service.

4. T-Mobile's customers in the Pearl City Power Tower area will benefit from improved wireless telecommunications coverage.

II.

Discussion

Under HRS § 269-19, a public utility is required to obtain commission approval prior to, among other things, leasing or otherwise disposing of, or encumbering the whole or any part of its road, line, plant, system or other property necessary or useful in the performance of its duties to the public. "Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void."[9]

In addition, HAR § 6-80-78 states, in relevant part:

> (a) All agreements concerning access to poles, ducts, conduits, and rights-of-way adopted by negotiation or arbitration, including any agreement negotiated and adopted before the effective date of this chapter, must be submitted to the commission for review and approval. Upon the submission of an agreement to the commission for review and approval, a copy of the agreement shall be served on the consumer advocate.
>
> (b) The commission shall approve or reject the agreement, with written findings as to any deficiencies. The commission may only reject:
>
> (1) An agreement, or any portion of the agreement, adopted by negotiation if it finds that:
>
> (A) The agreement, or any portion of the agreement, discriminates against a telecommunications carrier not a party to the agreement; or

[9] HRS § 269-19.

(B) The implementation of the agreement, or any portion of the agreement, is not consistent with the public interest, convenience, and necessity;

. . . .

HAR § 6-80-78.[10]

Here, it appears that approval of the License Agreement and Master Agreement is reasonable and in the public interest. The various terms and conditions of the License Agreement and Master Agreement do not appear to discriminate against other carriers or to negatively impact HECO's ability to provide electric service to its customers.[11] With regard to the license fee, it is a negotiated fee between T-Mobile and HECO and appears to reflect the fair market value of comparable license fees. Moreover, approval of the License Agreement and Master Agreement appears to be in the public interest. As noted above, the License Agreement and Master Agreement provide benefits to HECO, T-Mobile, and their customers that are in the public interest.

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[10]HAR § 6-80-78(c) states:

> The commission shall approve or reject the agreement within ninety days after submission by a party of an agreement adopted voluntarily by negotiation, or within thirty days after submission by a party of an agreement adopted by arbitration. If the commission fails to act within the prescribed time period, the agreement is deemed approved.

HAR § 6-80-78(c). Section 6-80-78(c), however, does not effect an approval under HRS § 269-19.

[11]HECO asserts that "[t]he License and Master Agreement will not interfere in any way with [its] ability to provide electric utility service to the public." Application at 7.

Based on the above, the commission concludes that the License Agreement and Master Agreement, described in the Application, should be approved.

III.

Orders

THE COMMISSION ORDERS:

1. HECO's Application, filed on November 14, 2006, requesting commission approval of the License Agreement and Master Agreement (to the extent the License Agreement is subject to the provisions of the Master Agreement) for the installation of communications equipment and related facilities at the Pearl City Power Tower, is approved.

2. This docket is closed, unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii FEB 27 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Benedyne S. Stone
Commission Counsel

2006-0451.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23278 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

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DATED: FEB 27 2007