

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

HAWAIIAN TELCOM, INC., AND)
HAWAIIAN ELECTRIC COMPANY, INC.,)
HAWAI`I ELECTRIC LIGHT COMPANY,)
INC. AND MAUI ELECTRIC LIGHT)
COMPANY, LIMITED)

DOCKET NO. 2018-0075

For Approval of the Transfer of)
Equity Ownership Interest in)
Certain Joint Poles, to Commit)
Funds In Excess of \$2,500,000,)
Accounting and Ratemaking)
Treatment, Amendments to Joint Pole)
Agreements Between the Applicants,)
Asset Transfer Agreement, and Pole)
Licensing Agreement.)

DECISION AND ORDER NO. 35768

PUBLIC UTILITIES
COMMISSION

2018 OCT 16 P 1:23

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Licensing Agreement.)

DECISION AND ORDER

By this Decision and Order,¹ the commission, subject to a certain condition, (1) approves Hawaiian Telcom's and the HECO Companies' request to transfer Hawaiian Telcom's ownership

¹The Parties are HAWAIIAN TELCOM, INC. ("Hawaiian Telcom"), and HAWAIIAN ELECTRIC COMPANY, INC. ("Hawaiian Electric" or "HECO"), HAWAI'I ELECTRIC LIGHT COMPANY, INC. ("Hawaii Electric Light" or "HELCO"), and MAUI ELECTRIC COMPANY, LIMITED ("Maui Electric" or "MECO") (Hawaiian Electric, Hawaii Electric Light, and Maui Electric are collectively referred to as the "HECO Companies," and Hawaiian Telcom and the HECO Companies are collectively referred to as "Applicants"), and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

equity interest in the joint poles to the HECO Companies ("Proposed Transfer"), (2) approves the HECO Companies' request to commit funds to acquire Hawaiian Telcom's interest in the joint poles; (3) approves the Asset Transfer Agreement, Pole Licensing Agreement ("PLA"), and Amendments to the Joint Pole Agreements (collectively, the "Agreements") between the HECO Companies and Hawaiian Telcom; and (4) approves the accounting and ratemaking treatment described in Exhibit E of the Application.²

I.

Background

Hawaiian Telcom is a Hawaii corporation and a wholly-owned subsidiary of Hawaiian Telcom Communications, Inc.³ Hawaiian Telcom provides local and intraLATA telecommunications services statewide, and is also the incumbent local exchange carrier for the State of Hawaii.⁴

²"Application of [Hawaiian Telcom] and [the HECO Companies]; Verification; Exhibits A-F; and Certificate of Service," filed March 27, 2018 ("Application").

³Application at 8.

⁴Application at 8.

Hawaiian Electric, a wholly-owned subsidiary of Hawaiian Electric Industries, Inc., is the franchised provider of electric utility service on the island of Oahu.⁵

Hawaii Electric Light and Maui Electric are subsidiaries of HECO and provide electric utility service to the islands of Hawaii and Maui, respectively.⁶

A "joint pole" refers to a utility pole that is owned by and carries the service lines and related attachments of multiple entities.⁷ The owners of these joint poles include Hawaiian Telcom, the HECO Companies, and the State of Hawaii and counties, with Hawaiian Telcom and the HECO Companies jointly owning a predominant share of each of those poles within the HECO Companies' service territories.⁸

There is a "joint pole agreement" ("JPA") between the owners of each joint pole, which, among other things, describes the share of the costs associated with the procurement and maintenance of each pole, the timeframe for installation or

⁵In re Hawaiian Elec. Co., Inc., Docket No. 2010-0130, Decision and Order filed January 7, 2011, at 2.

⁶Application at 9; In re Pub. Utils. Comm'n, Order No. 35363, filed March 22, 2018, at 4 n.5.

⁷Application at 3.

⁸Application at 3.

maintenance work to be performed, and expedited procedures for emergency repairs and replacements of the joint poles.⁹

The first JPA existed in 1922, when Hawaiian Electric, Maui Electric, and Hawaii Electric Light were stand-alone companies, and Hawaiian Telcom's landlines were the only communication services provided in the State of Hawaii.¹⁰ Because these utilities were separate, stand-alone companies, the JPA applicable to each utility differed from one another, which resulted in a divergence across the islands in the administration of the joint poles.¹¹

Today, Hawaiian Telcom and the HECO Companies have operated under the existing JPAs, as amended. These existing JPAs consist of five separate agreements for each of the islands of Oahu, Hawaii, Maui, Lanai, and Molokai.¹² According to Applicants, the original JPAs "are no longer effective in this constantly evolving technological environment because the existing process allows for the Applicants to manage different spaces on the pole, and due to the nature of their distinct businesses, the Applicants

⁹Application at 3, 16.

¹⁰Application at 16.

¹¹Application at 16.

¹²Application at 15.

interpret and process requests for attachments to joint poles differently."¹³

These spaces on each pole are described, as follows: (1) the Electric Utility Space where the HECO Companies place their energized electric wires and other distribution equipment; (2) the Communication Space where Hawaiian Telcom places its communications equipment; and (3) the Streetlight Space where the State of Hawaii and counties place their street lights or traffic-related equipment.¹⁴ As a result of the Proposed Transfer, the HECO Companies will own "all the space on joint poles except for the lighting space[,] and "[a]ll areas on the joint poles will be managed by the [HECO] Companies."¹⁵

Third-party attachers access the poles through separate licensing agreements with the owners, which are predominantly with Hawaiian Telcom in the Communication Space.¹⁶

Described as an "involved and time-consuming process," Applicants state that, currently, any installation or maintenance of attachments to a joint pole requires prior notice and agreement

¹³Application at 17.

¹⁴Application at 14.

¹⁵Application at 14 n.16.

¹⁶Application at 3, 14. "Third-party attachers" refer to competitive local exchange carriers, cable television providers, and others. Id. at 3 n.4.

by all owners to an applicable JPA governing a particular pole before the initiating party can move forward with the installation or maintenance work.¹⁷ Hawaiian Telcom and the HECO Companies differed in their interpretation and processing of requests for attachments to the joint poles, which resulted in disputes and delays between Hawaiian Telcom, the HECO Companies, and other joint owners and third-party attachers.¹⁸ For example, disagreements arose between Hawaiian Telcom and the HECO Companies regarding joint pole procedures and payments under an applicable JPA.¹⁹

Moreover, Applicants state that it has "become apparent that the original joint pole business arrangements cannot keep pace with the current divergent business arrangements of the Applicants, the increasing demand for access to pole infrastructure, and the rapid deployment of new and alternative communication technology services."²⁰ According to Applicants, the

distribution[] pole infrastructure that is the primary subject of the JPAs between Hawaiian Telcom and the [HECO] Companies has become a fundamental building block for the rapid deployment of wireless and fiber network build-outs to meet the ever-growing demand for broadband, 4G, LTE, and 5G technology communication services, as well as providing

¹⁷Application at 16.

¹⁸Application at 17.

¹⁹Application at 17.

²⁰Application at 13-14.

the critical framework to support a converged modern grid, communication technologies, smart city technologies, and the internet of things (IoT) to come in the future.

Application at 13 (footnote omitted).

Applicants thus submit that the approvals they seek in this docket reflect their efforts to implement a more effective and efficient administration of the jointly-owned pole infrastructure within the HECO Companies' service territories, as well as "more appropriately accommodate today's fast-paced technology-driven society by having the [HECO] Companies serve as the sole administrator and manager of poles for joint use."²¹

A.

The Proposed Transfer

The Proposed Transfer consists of Hawaiian Telcom transferring all of its rights, titles, interests, and ownership in all of its jointly-owned poles to the HECO Companies in exchange for the HECO Companies providing a credit to Hawaiian Telcom in the amount of \$47,970,092 ("Proposed Transfer Price").²² The total number of poles included in the Proposed Transfer is 119,585.²³

²¹Application at 14.

²²Application at 25.

²³Application at Exhibit E.

According to Applicants, the Proposed Transfer Price "represents the value of Hawaiian Telcom's ownership equity interest in the assets transferred based on the total number of joint poles subject to transfer and the depreciated value of the joint poles as of December 31, 2017."²⁴ To that end, a portion of the Proposed Transfer Price includes allocating a maximum depreciation rate of 85% for those poles that are greater than 18 years old.²⁵ According to Applicants, "the JPAs apply a 5% depreciation rate to calculate the remaining net book value of poles"; thus, a pole would have "zero net value after 20 years."²⁶

However, by "including a maximum depreciation of 85%, the JPAs allow for the owner selling their interest to obtain some value for poles that are greater than 18 years in age (85% maximum depreciation)."²⁷ According to Applicants, "[t]his depreciation agreement in the JPAs has no bearing on how depreciation is treated in the depreciation studies or rate cases" -- the depreciation agreement in the JPAs "is mainly to address purchase rights and valuation of the poles."²⁸

²⁴Application at 25.

²⁵Applicants Response to CA-SIR-7, filed August 2, 2018; see Application at Exhibit E.

²⁶Applicants Response to CA-SIR-7, filed August 2, 2018.

²⁷Applicants Response to CA-SIR-7, filed August 2, 2018.

²⁸Applicants Response to CA-SIR-7, filed August 2, 2018.

The Joint Pole Manual between Hawaiian Electric, Hawaiian Telcom, the City and County of Honolulu, and the State of Hawaii provides in pertinent part:

27. POLE REPLACEMENTS

. . . .

C. Replacement for Benefit of One Party-Adjust Rights & Changeover Cost

The premature replacement of a pole or pole line may be made at the request of any utility. The company requesting such a replacement shall pay for changeover labor and transportation, plus overheads (exclusive of material) of the other pole owners, less the depreciated credit of 5% per year of the normal transfer cost (maximum 85% depreciation). Normal transfer cost means the detachment and attachment of existing facilities from an old pole (including overheads) for betterment of facilities will be absorbed in its entirety by the party making the transfer to the new pole. Betterment shall mean and include any upgrading to the facility being relocated or transferred solely for the benefit of and at the election of the utility, not attributable to the pole replacement.

. . . .

In addition, the party requesting the changeout shall credit to the owners of the old pole adjustment of rights based on the original unit cost to install the pole, less a depreciation of 5% per year with a maximum of 85% depreciation. There shall always be a 15% remaining value of the pole, regardless of the age of the pole, providing the pole is in fair or better condition. Cost of removal of existing pole will be absorbed by party requesting the replacement.

Applicants Response to CA-IR-4 at Attachment 2-1, filed June 21, 2018.

The same Joint Pole Manual also states without reference to the value to be assigned to poles older than 18 years:

13. SALE OF EQUITY IN POLES

Sale of equity in joint poles can be made only to Members of the Joint Pole Agreement unless agreed to by separate contract among all parties with interest in the line or poles to be sold. Where pole line sales are proposed to private owners by one company and an interest in said pole line is owned by another company, the full terms of such sale shall be conveyed to the other company for acceptance or refusal. On sales of complete ownership to private parties, where rights are given for joint occupancy and when the maintenance becomes a joint obligation of the owners and occupants, the cost of maintenance is to be shared as agreed in the terms of the sales agreement.

Applicants Response to CA-IR-4 at Attachment 2-1, filed June 21, 2018.

According to Applicants, the above-quoted portions of the Joint Pole Manual should be read together as establishing the maximum 85% depreciation amount.²⁹

A provision for 85% maximum pole depreciation for "serviceable poles" also exists in the JPA applicable to the Island of Hawaii. More specifically, section 6.3 of the JPA,

²⁹See Applicants Response to CA-IR-4.i, filed June 21, 2018 ("For reference please see the O'ahu JPA at pages 10, 16 and 18, which establish and refer to the max depreciation amount of 85%.")

titled "MAXIMUM DEPRECIATION," states: "Poles in serviceable condition will have a maximum depreciation of 85%."³⁰

The JPAs for the islands of Maui, Lanai, and Molokai "are silent as to the pole depreciation amount"; thus, Applicants state that, "where silent, the [HECO] Companies believe it is appropriate to treat pole depreciation the same as Oahu and the island of Hawai'i."³¹

The Proposed Transfer Price is divided amongst the HECO Companies, as follows:

1. \$24,665,897 for 50,661 poles that are jointly owned by Hawaiian Electric and Hawaiian Telcom;
2. \$19,108,221 for 45,645 poles that are jointly owned by Hawaii Electric Light and Hawaiian Telcom; and
3. \$4,195,974 for 23,279 poles that are jointly owned by Maui Electric and Hawaiian Telcom.³²

Of the total number of jointly-owned poles, 92,946 poles are from 1996 and earlier, and have the maximum depreciation amount of 85% assigned to them.³³

³⁰Applicants Response to CA-IR-4 at Attachment 2-2, filed June 21, 2018.

³¹Applicants Response to CA-IR-4.i, filed June 21, 2018.

³²Application at 25-26.

³³Application at Exhibit E.

According to Applicants, the following items will be deducted from the credit reflected by the Proposed Transfer Price:

1. The settlement of prior billings;
2. The settlement for unbilled poles; and
3. Annual attachment fees.³⁴

All three deductions are explained in further detail below. Once the credit amount is exhausted, Hawaiian Telcom will be responsible for cash payments of any other amounts owed.³⁵

B.

The Master Agreement

As recognized by the Consumer Advocate,³⁶ the Proposed Transfer Price is the result of a Master Agreement Resolving Joint Pole Matters, dated April 4, 2018 ("Master Agreement"), which was not included as one of the Agreements that Applicants' seek approval for in their Application. Instead, the Master Agreement was included as an Attachment to Applicants' Response to CA-IR-2.a, filed June 21, 2018.

³⁴Application at Exhibit E.

³⁵Application at Exhibit E.

³⁶Consumer Advocate Statement of Position, filed August 27, 2018 ("Consumer Advocate SOP"), at 10.

According to Applicants, the Master Agreement "is essentially the settlement agreement that the Parties ultimately reached to resolve their disputes over the [JPAs]." ³⁷ Because Applicants view the Master Agreement as a "private settlement agreement between two litigants that happen to be public utilities[,] " Applicants do not believe that an application requesting commission approval of the Master Agreement was necessary. ³⁸

These above-referenced disputes include Hawaii Electric Light's complaint filed in the Third Circuit Court against Hawaiian Telcom regarding non-payment (Civil No. 16-1-0229), and an arbitration between Applicants for their unresolved claims (Hawaiian Electric Company Inc. v. Hawaiian Telcom, Inc., DPR Case No. 16-1-0651-A). ³⁹ Both of these proceedings are on hold pending the outcome of the subject Application in this docket. ⁴⁰

Briefly summarized as to the disputes between Hawaiian Telcom and the HECO Companies, after a joint pole is installed by the HECO Companies, the HECO Companies bill the other

³⁷Applicants Response to CA-SIR-6, filed August 2, 2018.

³⁸Applicants Response to CA-SIR-6, filed August 2, 2018.

³⁹Applicants Response to CA-IR-1, filed June 21, 2018.

⁴⁰Applicants Response to CA-IR-1, filed June 21, 2018.

joint pole owners for their share of the cost.⁴¹ Hawaiian Telcom did not pay for these invoices due to Hawaiian Telcom's interpretation or views of how the JPAs operate, and these unpaid bills are the subject of the disputes.⁴² According to Applicants, although the HECO Companies do have records of unpaid bills, the actual number of unbilled poles associated with these unpaid invoices are also disputed between Hawaiian Telcom and the HECO Companies.⁴³

However, Applicants "have agreed through this settlement that the total number of unbilled poles is 6,991," worth a total of \$6,400,000 (\$4,434,501 for Hawaiian Electric, \$937,434 for Hawaii Electric Light, and \$1,028,065 for Maui Electric).⁴⁴ Additionally, Hawaiian Telcom would pay the HECO Companies \$19,063,667 (\$12,305,071 to Hawaiian Electric, \$5,456,862 at Hawaii Electric Light, and \$1,301,734 to Maui Electric) "for disputed joint pole payments as part of this settlement

⁴¹Applicants Response to CA-IR-1, filed June 21, 2018.

⁴²Applicants Response to CA-IR-1, filed June 21, 2018.

⁴³Applicants Response to CA-IR-1, filed June 21, 2018.

⁴⁴Applicants Response to CA-IR-1, filed June 21, 2018; Application at Exhibit E. "Unbilled poles" refers to those "new poles that were installed but not yet invoiced" by the HECO Companies; or, in other words, for those "pole replacements" that occurred "after the initiation of disputes regarding the amounts owed." Applicants Response to CA-IR-1.c.6.a, filed June 21, 2018; Application at Exhibit E.

agreement[.]”⁴⁵ The credit associated with the Proposed Transfer Price will be deducted by these settled amounts.⁴⁶

Because the amount of deductions will be less than the Proposed Transfer Price, the Master Agreement establishes a “Credit Memo” for the net amount of the Proposed Transfer Price.⁴⁷ Hawaiian Telcom is not entitled to the payment of cash in the amount of the Credit Memo.⁴⁸ According to the Master Agreement, once the balance of the Credit Memo is zero, payment for all outstanding and incurred attachment fees, along with other payments, will be made in cash as set forth in the agreements between Hawaiian Telcom and the HECO Companies.⁴⁹

In comparison to its view on the Master Agreement, Applicants state that a “transfer of assets from one utility to another” was part of the settlement agreement, which was achieved through a series of additional agreements.⁵⁰ This Application was

⁴⁵Applicants Response to CA-IR-1.c.6.a, filed June 21, 2018; Application at Exhibit E.

⁴⁶Applicants Response to CA-IR-2.a at Attachment 1, filed June 21, 2018.

⁴⁷Applicants Response to CA-IR-2.a at Attachment 1, filed June 21, 2018.

⁴⁸Applicants Response to CA-IR-2.a at Attachment 1, filed June 21, 2018.

⁴⁹Applicants Response to CA-IR-2.a at Attachment 1, filed June 21, 2018.

⁵⁰Applicants Response to CA-SIR-6, filed August 2, 2018.

filed under HRS § 269-19(a) because Applicants seek approval of those additional Agreements.⁵¹ Because the Master Agreement does not "effect any transfer of any necessary or useful assets from one utility to another," Applicants state that the Master Agreement is not subject to HRS § 269-19(a).⁵²

However, Applicants do not object to commission approval of the Master Agreement "if the Commission determines that approval of the Master Agreement is required under HRS § 269-19(a) [.]"⁵³

C.

The Agreements

According to the Application, upon the effective dates set forth in the Agreements (the Asset Transfer Agreement, PLA, and Amendments to the Joint Pole Agreements), Hawaiian Telcom will transfer its ownership equity interest in and to the joint poles to the HECO Companies, and withdraw from the JPAs such that Hawaiian Telcom will no longer be an owner of any poles covered by the JPAs.⁵⁴ Hawaiian Telcom will remove all security interests and other financial encumbrances in Hawaiian Telcom's assets in the

⁵¹Applicants Response to CA-SIR-6, filed August 2, 2018.

⁵²Applicants Response to CA-SIR-6, filed August 2, 2018.

⁵³Applicants Response to CA-SIR-6, filed August 2, 2018.

⁵⁴Application at 26.

joint poles pursuant to the terms of the Asset Transfer Agreement.⁵⁵ Upon the effective date of change in control (upon commission approval), Hawaiian Telcom will also notify all third-party attachers with Hawaiian Telcom about the change of control of ownership of joint poles from Hawaiian Telcom to the HECO Companies.⁵⁶ According to Applicants, Hawaiian Telcom will also advise these third-party attachers that their licenses to attach equipment or facilities to joint poles with Hawaiian Telcom will be terminated, in accordance with the termination provisions of their licensing agreements, and that the third-party attachers should obtain new license agreements directly from the HECO Companies should they wish to continue to maintain those attachments after the effective date of change in control.⁵⁷ Upon the effective date of change in control, all responsibility, costs, revenues, fees, and benefits associated with these pole attachments by third-party attachers in the Communication Space on the jointly-owned poles will be transferred from Hawaiian Telcom to the HECO Companies.⁵⁸

⁵⁵Application at 27.

⁵⁶Application at 27.

⁵⁷Application at 27-28.

⁵⁸Application at 28. However, all third-party attachment or similar agreements applicable to poles that are solely owned by Hawaiian Telcom will remain in effect. Id. at 28 n.37.

As described by Applicants, the Asset Transfer Agreement is an implementing document similar to a deed or bill of sale which formalizes the terms, conditions, and obligations under which Hawaiian Telcom will sell, assign, transfer, and convey all of its right, title, ownership, equity and all other interest(s) in and to all of the utility poles, and the terms, conditions, and obligations under which the HECO Companies will acquire all of those utility poles and equipment.⁵⁹

The PLA sets forth the terms and conditions governing non-exclusive licenses which the HECO Companies would grant to Hawaiian Telcom for the installation, use, and maintenance of communications equipment owned by Hawaiian Telcom and its wholly-owned subsidiaries and affiliates used solely for the provision of communications services by Hawaiian Telcom.⁶⁰ The PLA has a term of 10 years, and Hawaiian Telcom has the right to extend the 10-year term for two additional 5-year terms.⁶¹ Among other things, the PLA does not allow Hawaiian Telcom to grant attachment sublicenses to other telecommunication service providers for equipment they own.⁶² The fixed annual license fee is subject to

⁵⁹Application at 28.

⁶⁰Application at 29.

⁶¹Application at 29.

⁶²Application at 29.

negotiation after the initial 10-year term, but will be no higher than the maximum allowable FCC pole attachment rate.⁶³ The aggregate annual license fee paid to the HECO Companies, inclusive of revenue taxes, is \$5,050,000 per year.⁶⁴ If Hawaiian Telcom wishes to attach additional equipment after the effective date of change in control to new or additional poles, Hawaiian Telcom will pay additional annual license fees to the HECO Companies at annual "per pole or per attachment" rates, which will be updated annually.⁶⁵

The Amendments to the JPAs are intended to amend each JPA to account for the change in ownership of Hawaiian Telcom's equity interests in the poles it jointly owns with the HECO Companies, as a result of the Master Agreement.⁶⁶

D.

Future Revenue Opportunities

According to the Application, upon the effective date of change in control of the proposed asset transfer, the HECO Companies will receive pole attachment revenues from

⁶³Application at 29-30.

⁶⁴Application at 30.

⁶⁵Application at 31.

⁶⁶See Application at Exhibit C.

Hawaiian Telcom for Hawaiian Telcom's use of the existing poles that were transferred.⁶⁷ These attachment revenues are expected to total \$4,400,000 per year over a ten year period (\$2,371,930 paid to Hawaiian Electric, \$1,377,208 paid to Hawaii Electric Light, and \$650,862 paid to Maui Electric).⁶⁸

If Hawaiian Telcom wants to attach additional equipment after the effective date of change in control to new or additional poles, Hawaiian Telcom will be paying the HECO Companies additional annual license fees "at certain annual 'per pole or per attachment' rates."⁶⁹ These new poles are estimated at a total of 320 per year for the HECO Companies over a ten-year period (100 per year for Hawaiian Electric, 180 per year for Hawaii Electric Light, and 40 per year for Maui Electric).⁷⁰

Upon the effective date of change in control, the HECO Companies will also receive revenues from Hawaiian Telcom for the remediation of double poles.⁷¹ These revenues are expected to total \$650,000 per year for the HECO Companies over a ten-year period (\$334,693 per year for Hawaiian Electric, \$187,503 per year

⁶⁷Application at Exhibit E.

⁶⁸Application at Exhibit E.

⁶⁹Application at Exhibit E.

⁷⁰Application at Exhibit E.

⁷¹Application at Exhibit E.

for Hawaii Electric Light, and \$127,804 per year for Maui Electric).

Other than Hawaiian Telcom, the HECO Companies state they "may receive attachment and other ancillary revenue from cable service providers, small cell wireless carriers, fiber service providers, and/or other service providers or users."⁷² Briefly summarized, this additional attachment revenue includes revenue from cable service providers (primarily Spectrum), small cell wireless service providers, and fiber service providers.⁷³ Ancillary revenue will be generated from "all new attachers to [the HECO] Companies' pole[,]" which include "application fees, pre-inspection fees, and post-inspection fees" that will be "applied on a per pole basis and paid for by the prospective attacher."⁷⁴

The Application also suggests that there are "a number of other smaller potential opportunities to leverage pole assets in order to derive benefits that can be passed back to customers."⁷⁵ These opportunities include allowing transmission tower attachments (revenue may begin in 2020 and "ramp up through 2027"),

⁷²Application at Exhibit E.

⁷³Application at Exhibit E.

⁷⁴Application at Exhibit E.

⁷⁵Application at Exhibit E.

and leasing out unused fiber capacity in its network in the future (leasing revenue may begin in 2023 and "ramp up through 2027").⁷⁶

E.

Future Expenses

According to the Application, concomitant with the Proposed Transfer are the operating and maintenance ("O&M") costs, inasmuch as the HECO Companies will be responsible for all costs related to pole management under the new Agreements.⁷⁷ The Application states that O&M costs will peak in 2018 due to one-time costs associated with the start-up of the department that will manage pole assets under the sole managing owner/joint use arrangement model, which includes software costs required to perform pole management.⁷⁸

The HECO Companies further state that the plant in service amounts will be depreciated based on the commission-approved depreciation rates and following current company practices.⁷⁹ They also state that they do not expect material increases to liability insurance rates for the poles;

⁷⁶Application at Exhibit E.

⁷⁷Application at 35 & Exhibit E.

⁷⁸Application at Exhibit E.

⁷⁹Application at Exhibit E.

thus, no amounts for insurance are added at this time.⁸⁰ Revenue taxes include a Public Service Company Tax at 5.885%, commission fee of 0.5%, and Franchise Tax at 2.5%.⁸¹ Income taxes reflect updated rates from the Tax Cuts and Jobs Act, which reduced the corporate tax rate from 35% to 21%, and the state income tax rate remains the same at 6.4%.⁸²

The HECO Companies calculated the allowed rate of return on pole assets using the most current authorized cost of capital for each Company, which is 7.57% for Hawaiian Electric, 7.80% for Hawaii Electric Light, and 7.43% for Maui Electric, and is applied to the net value of the poles and anchors, less depreciation, accumulated deferred income tax, and any deferred credits.⁸³

However, the HECO Companies state that the attachment and ancillary revenues they receive from Hawaiian Telcom and third-party attachers "will offset some or all of the [HECO] Companies' incremental O&M costs. As the [HECO] Companies explore and learn under this new business arrangement, they anticipate, overall, attachment revenues will exceed the

⁸⁰Application at Exhibit E.

⁸¹Application at Exhibit E.

⁸²Application at Exhibit E.

⁸³Application at Exhibit E.

incremental O&M costs, depreciation and the allowed return on the additional investment in the poles."⁸⁴

F.

Accounting Treatment

According to Hawaiian Telcom, upon the effective date of transfer of ownership of the poles to the HECO Companies, Hawaiian Telcom plans to account for the new arrangement as a lease of property for the space utilized on existing poles at the time of transfer, and will apply the appropriate lease accounting guidelines at the time of transfer.⁸⁵ Hawaiian Telcom anticipates that this will result in adjusting the liability to the HECO Companies to the present value of future amounts owed under the Pole License Agreement, which will be the "then present value of the liability for the combined annual cash license payments of \$5,050,000."⁸⁶ Hawaiian Telcom states there will be no gain or loss recorded because the lease accounting rules prohibit recognition based on the continuing involvement with the pole

⁸⁴Application at 34.

⁸⁵Application at Exhibit E.

⁸⁶Application at Exhibit E.

assets, which is primarily in the form of continued use of the pole assets for an extended period of time.⁸⁷

Hawaiian Telcom will continue to "accrete interest on the liability to the [HECO] Companies through recognition of interest expense on an ongoing basis[,]" but "[p]ayments to the [HECO] Companies will reduce the liability."⁸⁸

Hawaiian Telcom states it will not attempt any level of cost recovery in customer rates, and there will be no impact to Hawaiian Telcom's recorded revenues or level of profitability and does not expect that the agreement will have a significant impact on its results of operations.⁸⁹

The HECO Companies propose, effective upon approval of the Agreements, that they will record as plant in service at each respective company the agreed upon value of the poles to be transferred totaling \$47,970,092 (\$24,665,897 for Hawaiian Electric, \$19,108,221 for Hawaii Electric Light, and \$4,195,974 for Maui Electric), and record a credit to Hawaiian Telcom.⁹⁰ That credit will be reduced by the settled amounts discussed above, \$19,063,667 for amounts owed by

⁸⁷Application at Exhibit E.

⁸⁸Application at Exhibit E.

⁸⁹Application at Exhibit E.

⁹⁰Application at Exhibit E.

Hawaiian Telcom to the HECO Companies for prior billings under the JPAs, and \$6,400,000 as a settled amount for the unbilled poles. According to the Application, the amount for unbilled poles will be recorded in a deferred credit account and amortized as other operating revenue over a three-year period, beginning when the rates approved in a subsequent rate case (based on revenue requirements including such amounts in operating revenue) become effective.⁹¹

The HECO Companies further state:

Upon the Effective Date of the proposed asset transfer, the [HECO] Companies will receive attachment fees from Hawaiian Telcom for use of the poles. Such attachment fees are \$2,706,623 per year for Hawaiian Electric, \$1,564,711 per year for Hawaii Electric Light, and \$778,666 per year for Maui Electric (for a total of \$5,050,000 per year for the [HECO] Companies) over a ten year period. For financial reporting purposes the license fees will be included as revenues, and the credit to Hawaiian Telcom for the transfer of Hawaiian Telcom's interest in the jointly-owned poles will be reduced, until the payable is reduced to zero. Thereafter, Hawaiian Telcom would make cash payments for the license fees.

Application at Exhibit E.

As a result of the Agreements, the HECO Companies state that third-party attachers that have licenses or contracts with Hawaiian Telcom to attach to the joint poles will be providing the

⁹¹Application at Exhibit E.

attachment fees to the HECO Companies, and these amounts will be recorded as other operating revenue. Costs to maintain the poles will be included as normal maintenance expenses of the utility, and incremental pole maintenance costs will be offset with attachment revenues.⁹²

For ratemaking purposes, the HECO Companies propose that plant in service include the agreed-upon value of the transferred poles totaling \$47,970,092 (\$24,665,897 for Hawaiian Electric, \$19,108,221 for Hawaii Electric Light, and \$4,195,974 for Maui Electric) effective with the approval of the Agreements. The plant in service amounts will be depreciated based on the commission approved depreciation rates and following current company practices (beginning January of the following year).

The HECO Companies further propose for ratemaking purposes to include in other operating revenue in each of the HECO Companies' next rate cases, one-third of the estimated license fee the HECO Companies will "essentially receive from Hawaiian Telcom" (\$6,400,000 in total; \$4,434,501 for Hawaiian Electric, \$937,434 for Hawaii Electric Light, and \$1,028,065 for Maui Electric), for use of the poles without

⁹²Application at Exhibit E.

being billed for its share of the cost of the poles in the 2012 to 2017 time period.⁹³

The HECO Companies further propose that the \$5,050,000 annual attachment fees from Hawaiian Telcom also be included in other operating revenue for ratemaking purposes. The HECO Companies state that it will include all attachment fees and other ancillary revenues received from cable service providers, small cell wireless carriers, fiber service providers, and/or other service providers or users as other operating revenue.⁹⁴

G.

Benefits of the Proposed Transfer

According to Applicants, there are many benefits to the Proposed Transfer that are reasonable and consistent with the public interest, such as:

(1) Elimination of the different criteria used by Hawaiian Telcom and the HECO Companies for pole replacement, which has resulted in "double poles," thereby removing

⁹³Application at Exhibit E.

⁹⁴Application at Exhibit E.

the "backlog of double poles" that is currently approximated at 14,000;⁹⁵

(2) The efficient and timely transfer for attachments to new poles and the removal of old poles;

(3) Accelerate broadband deployment through a "single point of contact for administration of all existing and new attachments" on the poles;

(4) The efficient deployment of new communication technology such as 4G, LTE, and 5G wireless communication networks by providing a streamlined, efficient approval process for attachment to existing pole infrastructure;

(5) Improved predictability and control of costs inasmuch as (a) there will be "[n]o anticipated increase in [Hawaiian Telcom] customer bills as a result of this agreement"; (b) Hawaiian Telcom will have "[p]redictable pole attachment rates over the next ten years"; (c) the HECO Companies and their customers will benefit from "[p]redictable operations and maintenance ('O&M') costs and revenue[,]" along with a "steady, and known revenue stream from Hawaiian Telcom"; and (d) there will be "[c]onsistent terms allowing third parties to control and better forecast broadband and other technology network service and rollouts";

⁹⁵Application at 18, 23.

(6) The Proposed Transfer will not adversely affect Hawaiian Telcom's service quality to its customers;

(7) Hawaiian Telcom's operations "should become more effective and cost efficient" because the Proposed Transfer will relieve Hawaiian Telcom of its obligation "to expend time and labor resources to own, operate, and manage the joint poles, as well as the requirement to process make-ready requests from other telecommunications and cable providers";

(8) Hawaiian Telcom and the HECO Companies will share their joint pole records, which will all reside in a database owned and managed by the HECO Companies;

(9) Effective pole asset management because the "new agreements" between Hawaiian Telcom and the HECO Companies provide for transfer of facilities whenever the HECO Companies determine a pole needs to be replaced;

(10) The HECO Companies intend to collaborate with others in order to attempt to establish a "one touch" concept -- "the transfer, relocation, or alteration of third-party attachments in the Communication and Common Spaces of the poles, whereby one construction crew is designated to perform a majority of the make-ready work";

(11) Having a single managing owner of distribution poles and third-party attachments will "help minimize potential safety risks by establishing and applying uniform engineering

design and standards across all distribution poles in all of the [HECO] Companies' operating territories";

(12) Internal workflow efficiencies including anticipated cost savings due to more efficient processes and elimination of joint pole billing and collections due to their "sole managing ownership" of the poles, streamlined communications, standardization of designs and engineering requirements for attachments on poles, and a "modern, comprehensive pole infrastructure management system (database) for attachments to joint poles" that will utilize online applications, automated processing, and a communication portal to efficiently and expeditiously record, manage and monitor third-party attachment requests from application start to completion;

(13) The HECO Companies will be conducting a six-month field survey assessment of the approximately 14,000 double poles that exist in the HECO Companies' service territory, as part of their obligations under the Agreements;

(14) Improved customer service because a sole managing owner/joint use arrangement allows the HECO Companies to take action on complaints without being "restrained" under the current joint owner arrangement, "as they [currently] have no authority to unilaterally take corrective action."⁹⁶

⁹⁶Application at 4-5, 17-24.

Applicants also state that the Proposed Transfer provides the following benefits specific to third-party attachers:

(1) If the commission approves the Master License Agreement template,⁹⁷ then all third-party attachers will sign an approved, standardized agreement with a non-communications company;

(2) Having a sole managing owner/joint use arrangement helps to "assure standardized terms and conditions for the attachment of facilities for all communications service providers in accordance with FCC rules and regulations";

(3) Predictable costs through annual licensing fees, potential make ready costs, and other one-time costs that will be identified in advance and allow for automated, reoccurring payments for license fees and services provided by the HECO Companies;⁹⁸ and

(4) The HECO Companies state they will be "solely responsible for third-party attachers attaching in the Communication Space[,]" "will seek third-party attachers'

⁹⁷According to Applicants, an application will be filed with the commission that seeks approval of the template Master License Agreement. Applicants Response to CA-IR-12, filed June 21, 2018.

⁹⁸According to Applicants, third-party attachers will have the option of doing "some of the make-ready or engineering work on their own, or allow the [HECO] Companies to provide those services for a fee." Application at 24-25.

advice through a collaborative process to update their engineering standards to be in line with the new sole managing owner/joint-use arrangement[,]” and this “collaborative process will remain ongoing and allow for further refinements and efficiencies.”⁹⁹

Finally, the HECO Companies state they will be required to restructure parts of their pole management process area into a new department, referred to as Pole Infrastructure Enterprise (“PIE”), in anticipation of the increased workflow due to the FCC and the State of Hawaii’s push for 4G, LTE, and 5G deployment and expanded broadband infrastructure.¹⁰⁰ PIE is intended to assist in accomplishing the State of Hawaii’s goals and have one central location and point of contact for third-party attachers.¹⁰¹ According to the HECO Companies, the PIE also puts in place the proper workflows (personnel, procedures, process, tools and technology) that permit the HECO Companies to better and more cost-efficiently manage all its distribution system pole assets.¹⁰² To that end, the HECO Companies state that the “cornerstone” of the PIE “platform will be automated comprehensive infrastructure

⁹⁹Application at 24-25.

¹⁰⁰Application at 32.

¹⁰¹Application at 32.

¹⁰²Application at 33.

management database for the [HECO] Companies' distribution poles, with a much higher degree of asset data quality and integrity."¹⁰³

H.

Application

On March 27, 2018, Applicants filed their Application requesting the commission's approval of the following matters:

1. Approval of Hawaiian Telcom's transfer of its ownership equity interest in the joint poles to the HECO Companies, or in the alternative, to the extent the commission finds it appropriate and necessary, an exemption or waiver from certain regulatory requirements set forth under HRS Chapter 269 and HAR Chapters 6-61 and 6-80 to allow Hawaiian Telcom to transfer its ownership equity interest in the joint poles to the HECO Companies;

2. Approval for the HECO Companies to commit funds to acquire Hawaiian Telcom's joint pole ownership interest;

3. Approval of the Agreements between Hawaiian Telcom and the HECO Companies;

4. Approval of the accounting and ratemaking treatment described in Exhibit E to the Application; and

¹⁰³Application at 33-34.

5. Granting Applicants such other further relief that may be deemed applicable, required, just and equitable under the circumstances.¹⁰⁴

Applicants maintain they "worked collaboratively to negotiate this transaction providing value" not only to "each other," but also "for the benefit of the State as a whole."¹⁰⁵ Applicants state that the "most notable benefits of this new arrangement" include:

With regard to future rate cases, the HECO Companies state:

[A]ttachment revenues estimated to be collected for the test year will be included in Other Operating Revenues in future rate cases, as well as incremental O&M costs, depreciation, and the cost of the poles. The attachment revenues included in the rate cases will cover the costs of the incremental O&M costs, depreciations and authorized rate of return on the incremental investment in the poles. As part of the Annual Decoupling filing, actual revenues and expenses for this new business will be included in earnings sharing mechanism ("ESM") calculation. Under the ESM, if the [HECO] Companies' actual rate of return on equity exceeds the [return on equity] found to be fair and reasonable in each of the [HECO] Companies' last rate cases, rates will be reduced to share the excess with customers. To the extent revenues generated from this arrangement exceed the amounts in the

¹⁰⁴Application at 1-2.

¹⁰⁵Application at 4.

test year, the benefits will be shared to the extent the ESM is triggered.

Application at 36.

The HECO Companies propose to provide an annual report to the commission, as follows:

To ensure transparency, total attachment and ancillary revenues, total incremental O&M costs, depreciation costs, and the authorized return to [HECO Companies'] shareholders will be isolated and tracked annually for Commission review. The [HECO] Companies propose to provide the Commission with the annual report by March 31st of each year for the preceding year, for ten years, to match the term of the PLA with Hawaiian Telcom. The annual report will contain the sections related to profit and loss as [provided in the Application.]

Application at 36-37.

I.

Consumer Advocate's Position

On August 27, 2018, the Consumer Advocate filed its Statement of Position wherein it recommended approval of the Application subject to certain conditions or adjustments.¹⁰⁶ This recommendation for approval includes approving the Agreements.¹⁰⁷

¹⁰⁶Consumer Advocate SOP at 2.

¹⁰⁷Consumer Advocate SOP at 22-23.

More specifically, the Consumer Advocate states that for various reasons the Proposed Transfer is just, reasonable, and in the public interest under the circumstances;¹⁰⁸ however, the Consumer Advocate believes that the "transfer price for the joint pole ownership and interest is overstated and this transfer price should be adjusted before" commission approval of the Proposed Transfer.¹⁰⁹

As observed by the Consumer Advocate, "the proposed transfer of the ownership interest by Hawaiian Telcom to the [HECO] Companies is the result of a Master Agreement Resolving Joint Pole Matters entered into by the Applicants on April 4, 2018."¹¹⁰ However, according to the Consumer Advocate, Applicants stated in their Response to CA-SIR-6.a, filed August 2, 2018, that "the Master Agreement Resolving Joint Pole Matters is not the subject of approval by the Commission consistent with HRS § 269-19(a), and, therefore, the Applicants did not seek Commission review of this transaction (the Master Agreement Resolving Joint Pole Matters) pursuant to HRS Chapter 269 in this application."¹¹¹

¹⁰⁸Consumer Advocate SOP at 5-10.

¹⁰⁹Consumer Advocate SOP at 10.

¹¹⁰Consumer Advocate SOP at 10; see Applicants' Response to CA-IR-2, filed June 21, 2018.

¹¹¹Consumer Advocate SOP at 10.

The Consumer Advocate's concern about overstatement of the Transfer Price is based in part on Exhibit E of the Application, which states that the "total depreciated value of [the] joint poles and joint anchors as of December 31, 2017 are \$24,665,897 for Hawaiian Electric, \$19,108,221 for Hawaii Electric Light, and \$4,195,974 for Maui Electric (for a total value of \$47,970,092)."¹¹² According to the Consumer Advocate, the depreciation tables submitted in support of these values reflect, even for the oldest poles, "a maximum depreciated value of 85%, which comes from the Applicants interpretation of the JPAs governing the financial treatment of the joint poles that are the subject of this docket."¹¹³

The Consumer Advocate states that the amount of the Transfer Price or how the Transfer Price is treated in a future rate case is "important because it sets forth the foundation for what the [HECO] Companies might seek to recover from its rate payers if those assets are incorporated in the [HECO] Companies rate base(s) in the future."¹¹⁴

As such, the Consumer Advocate recommends that, based on Decision and Order No. 17982, filed in Docket No. 00-0046 on

¹¹²Consumer Advocate SOP at 11.

¹¹³Consumer Advocate SOP at 11-12.

¹¹⁴Consumer Advocate SOP at 13.

August 25, 2000 ("Decision and Order No. 17982"), any poles "transferred with an installation date prior" to 1993 or 1994 should "have a depreciation balance of 'zero' as far as the regulated system of accounts of Hawaiian Telcom is concerned."¹¹⁵ The Consumer Advocate is concerned that if the Transfer Price is "too high and overstated early on," the HECO Companies customers and ratepayers "will be overcharged for the acquisition of assets to which they may have contributed in some form earlier on in the activities conducted by the Applicants in the past."¹¹⁶

Based on this recommendation, the Consumer Advocate suggests that the commission approve a reduced transfer price of \$35,263,313.22, which represents a \$12,706,778.78 reduction to the Proposed Transfer Price. The Consumer Advocate further recommends that the HECO Companies be required to provide "additional details as to how the transfer amount will not be recovered from customers[.]"¹¹⁷

Alternatively, the Consumer Advocate further recommends that the transfer amount be recognized in a "below the line

¹¹⁵Consumer Advocate SOP at 14-15 (refers to "prior to 1993"), 17 (refers to "before 1994").

¹¹⁶Consumer Advocate SOP at 13-14.

¹¹⁷Consumer Advocate SOP at 23.

(i.e., not recoverable from customers)" account for purposes of accounting and ratemaking treatment.¹¹⁸

Finally, the Consumer Advocate recommends that the commission should approve the accounting and ratemaking treatment proposed by the Applicants "with the clarification that the payments, even if only in the form of a credit that will be used to deplete a liability balance," will be recognized as revenues that will "offset the operating and maintenance expenses that will be incurred by the [HECO] Companies associated with the applicable utility poles."¹¹⁹

J.

Applicants' Replies

On September 13, 2018, Applicants filed their Replies to the Consumer Advocate's Statement of Position. The HECO Companies' Reply Statement of Position strongly disagrees with the Consumer Advocate's recommendation to reflect the Proposed Transfer Price as a below-the-line account because it is a "risk that the [HECO] Companies should not be required to accept based on the many benefits that this transaction will provide to the

¹¹⁸Consumer Advocate SOP at 18, 23.

¹¹⁹Consumer Advocate SOP at 23.

State and the general public."¹²⁰ The HECO Companies state that the "assets being acquired are serving electric customers, and the revenues generated under the agreement will be recorded above-the-line"; thus, the Proposed Transfer Price should also be recorded above-the-line.¹²¹

The HECO Companies further state that the Proposed Transfer Price will not overcharge customers and ratepayers for the acquisition of assets to which they may have contributed in some form "earlier on in the activities conducted by the Applicants in the past" because the Proposed Transfer Price is for Hawaiian Telcom's ownership share of the joint poles, "as previously established by the Joint Pole Agreement" and since the "2015 effective date of the operative Joint Pole Agreement, the [HECO] Companies have had general rate cases and rates set based on the valuation established by the Joint Pole Agreement, but the inclusion in prior rate cases was only for the [HECO] Companies' ownership share of the joint poles."¹²² The HECO Companies also point out that Hawaiian Telcom has not paid the HECO Companies "amounts owed for disputed joint pole costs

¹²⁰HECO Companies Reply Statement of Position, filed September 13, 2018 ("HECO Companies Reply SOP"), at 8.

¹²¹HECO Companies Reply SOP at 8.

¹²²HECO Companies Reply SOP at 8.

(which necessitated the present settlement), which amounts the [HECO] Companies have not charged customers."¹²³ The HECO Companies thus maintain that "customers receiving services from both Hawaiian Telcom and the [HECO] Companies have not been, and will not be, paying twice for these pole interests, i.e., Hawaiian Telcom's ownership interest in the joint poles."¹²⁴

The HECO Companies add that they "expect the attachment revenues will offset the cost of including the transfer price of \$47,970,092 in the [HECO] Companies' plant-in-service[.]"¹²⁵ The HECO Companies maintain that their "customers will not be harmed by including the negotiated transfer price into rate base, as the additional revenues will also be included in determining revenue requirements."¹²⁶ More specifically, the HECO Companies "anticipate that the pole attachment and other revenues from Hawaiian Telcom and other third-parties should offset the transfer amount and other related costs."¹²⁷

In its "Supplemental Response" to the Consumer Advocate's Statement of Position, filed September 13, 2018,

¹²³HECO Companies Reply SOP at 9.

¹²⁴HECO Companies Reply SOP at 9.

¹²⁵HECO Companies Reply SOP at 9.

¹²⁶HECO Companies Reply SOP at 9.

¹²⁷HECO Companies Reply SOP at 9.

Hawaiian Telcom also "strongly objects to any change in the price" for the following reasons:

1. The Proposed Transfer Price is "a fair and reasonable price that was agreed to among the parties only after more than a year of intense negotiations and is based primarily on the fact that the subject jointly owned poles are used and useful and still have value"; and

2. The Consumer Advocate's reduced transfer price could have "negative financial and other effects . . . on Hawaiian Telcom, potentially adversely impacting Hawaiian Telcom's operations and services to its customers."¹²⁸

K.

The IBEW Local 1357 Letters

On August 28 and 30, 2018, the International Brotherhood of Electrical Workers Local Union 1357 ("IBEW Local 1357" or "Local 1357") filed letters informing the commission of the issues it has with the "contract" between Hawaiian Telcom and the HECO Companies in light of Article 40 of the collective bargaining agreement ("CBA") between IBEW Local 1357 and Hawaiian Telcom.¹²⁹

¹²⁸Letter from S. Golden to commission, filed September 13, 2018 ("Hawaiian Telcom Reply SOP"), at 1-4.

¹²⁹Order No. 35665, "Directing Applicants to Respond to the August 28 and August 30, 2018 Letters from the [IBEW Local 1357]," filed September 6, 2018, at 3.

Among other actions, IBEW Local 1357 states it "will be filing an unfair labor practice charge with the National Labor Relations Board [{"NLRB"}]to aid its efforts to obtain" the information it seeks from Hawaiian Telcom. IBEW Local 1357 requests that the commission hold this matter in abeyance until:

(a) Hawaiian Telcom has fulfilled its obligations under the National Labor Relations Act to provide all requested information to IBEW Local 1357;

(b) Hawaiian Telcom and IBEW Local 1357 have had an opportunity to arbitrate, if necessary, "Hawaiian Telcom's violation of Article 40 with the appropriate remedy being imposed by the arbitrator";

(c) IBEW Local 1357's anticipated motion to confirm the arbitrator's decision; and

(d) Hawaiian Telcom and IBEW Local 1357 have engaged in the discussions required by Article 40.

On August 30, 2018, IBEW Local 1357 filed an additional letter with the commission.¹³⁰

On September 6, 2018, the commission filed Order No. 35665 directing Applicants and the Consumer Advocate to respond to IBEW Local 1357's letters.¹³¹

¹³⁰IBEW Local 1357's August 30, 2018 letter is attached to this Order as Exhibit B.

¹³¹Order No. 35665 at 5.

Hawaiian Telcom filed its response to the IBEW Local 1357's letters on September 5 and 13, 2018. In its September 5, 2018 letter, Hawaiian Telcom contends:

1. Hawaiian Telcom "has not entered into any such contracts" for "telephone plant craft work" under Article 40.1 of the CBA between it and IBEW Local 1357 -- according to Hawaiian Telcom:

While the agreements before the PUC provide, among other things, for certain work regarding poles and related attachments and equipment to be performed by external persons, [] they are expressly contingent upon receiving, and do not become effective and operational unless and until they receive, approval from the PUC. . . . As the PUC has not yet approved the agreements, they are not effective or operational. Accordingly, [Hawaiian Telcom] has not entered into any contract for telephone Plant craft work[;]

2. In footnote 1 following the words "external persons" in the block quote above, Hawaiian Telcom notes that, for purposes of its September 5, 2018 letter, Hawaiian Telcom "leaves unaddressed any argument that the work involved is not plant craft work, but does not waive its right to do so in any response to the grievance or [NLRB] action, or any related action, that Local 1357 may choose to bring";

3. IBEW Local 1357 is not a party to this proceeding and thus has no standing to seek a stay in this proceeding;

4. The commission has "consistently . . . ruled in prior telecommunications proceedings that Local 1357's assertions, allegations and/or disputes with respect to the CBA" "are contractual in nature and are not subject to the [commission's] regulation of [Hawaiian Telcom]"; and

5. Even if the commission believes that the Agreements are effective contracts for telephone Plant craft work, staying the docket is not warranted because IBEW Local 1357 has "several avenues to seek redress -- the [NLRB] and the CBA's grievance process"; in other words, IBEW Local 1357's concerns have "no bearing on the effectiveness or reasonableness of the proposed agreements."¹³²

In its September 13, 2018 letter, Hawaiian Telcom maintains its position articulated in its September 5, 2018 letter, and adds that IBEW Local 1357 has "already invoked" the dispute resolution procedure provided for in the CBA.¹³³

The HECO Companies filed its response on September 13, 2018. Therein, the HECO Companies contend:

¹³²Letter from S. Golden to commission, filed September 5, 2018.

¹³³Letter from S. Golden to commission, filed September 13, 2018.

1. IBEW Local 1357 should have timely sought leave to intervene or participate in this proceeding if the ramifications to IBEW Local 1357 are as severe as it claims;

2. IBEW Local 1357's request to stay this proceeding lacks merit because IBEW Local 1357's concerns are unrelated to merits of the Application; namely, the Application concerns "the merits of a contractual agreement between [Hawaiian Telcom] and the [HECO] Companies for the transfer of joint equity interest in certain joint poles[,] " rather than labor-related issues that are a subject of the CBA.

3. IBEW Local 1357's request to stay this proceeding is tantamount to a request for injunctive relief, and IBEW Local 1357 has failed to meet the standard for injunctive relief; and

4. Granting IBEW Local 1357's request to stay this proceeding would be prejudicial because a delay would deprive the State and customer of the benefits of the Proposed Transfer, and the HECO Companies are currently not receiving payments of amounts due under the existing JPAs, nor any disputed outstanding amounts from Hawaiian Telcom.¹³⁴

The Consumer Advocate filed its response on September 20, 2018. In summary, the Consumer Advocate states that

¹³⁴Letter from J. Viola to commission, filed September 13, 2018.

there is insufficient evidence provided thus far to determine whether a stay in this proceeding is warranted and appropriate to protect the public interest.¹³⁵

On October 1, 2018, IBEW Local 1357 filed another letter with the commission that attached a letter to Hawaiian Telcom that:

1. Indicated that IBEW Local 1357 would be informing the NLRB of Hawaiian Telcom's alleged failure to provide information requested by IBEW Local 1357, and "ask[ed] that a Complaint be issued immediately against [Hawaiian Telcom] on the unfair labor practice charge that Local 1357 has filed against [Hawaiian Telcom] (20-CA-226493)";

2. Stating that IBEW Local 1357 and Hawaiian Telcom have a disagreement on whether the bargaining unit work being transferred to the HECO Companies involves "plant craft work"; and

3. Stating that IBEW Local 1357's "fear is that [the commission] will issue a decision before Local 1357 has received the information it has requested" and, if IBEW Local 1357 "prevails on its Article 40 grievance and if the arbitrator directs that the Agreement be rescinded, then the [commission] would have entered an Order that is based on an invalid contract."¹³⁶

¹³⁵Consumer Advocate's Response to Order No. 35665, filed September 20, 2018, at 10.

¹³⁶Letter from T. Benevides to commission, filed October 1, 2018. Collectively, the August 28 and 30, 2018

II.

Discussion

Paragraph No. 2.3(g)(2) of General Order No. 7, as modified by Decision and Order No. 21002, states in pertinent part:

g. Capital Improvements.

2. Proposed capital expenditures for any single project related to plant replacement, expansion or modernization, in excess of \$2.5 million, excluding customer contributions, or 10 per cent of the total plant in service, whichever is less, shall be submitted to the Commission for review at least 60 days prior to the commencement of construction or commitment for expenditure, whichever is earlier Failure of the Commission to act upon the matter and render a decision and order within 90 days of filing by the utility shall allow the utility to include the project in its rate base without the determination by the Commission required by this rule. The data submitted under this rule shall be in such form and detail as prescribed by the Commission.

In Order No. 35444, filed May 11, 2018, the commission observed that the Parties waived the ninety-day deadline in Section 2.3(g)(2) of General Order No. 7.¹³⁷

The commission also previously said with regard to Paragraph 2.3(g)(2) of General Order No. 7:

and October 1, 2018 letters are referred to as "IBEW Local 1357's Letters."

¹³⁷Order No. 35444, "Approving the Parties' Proposed Procedural Schedule," filed May 11, 2018, at 2.

In general, the commission's analysis of capital expenditure applications involves a review of whether the project and its costs are reasonable and consistent with the public interest, among other factors. If the commission approves the utility's application, the commission in effect authorizes the utility to commit funds for the project, subject to the proviso that "no part of the project may be included in the utility's rate base unless and until the project is in fact installed, and is used and useful for public utility purposes."

Docket No. 04-0268, Decision and Order No. 21798,
filed May 3, 2005, at 34.

HRS § 269-19(a) provides in relevant part:

[N]o public utility shall sell, lease, assign, mortgage, or otherwise dispose of or encumber 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 . . . without first having secured from the public utilities commission an order authorizing it to do so. 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.

HRS § 269-7(a) provides in relevant part:

The public utilities commission and each commissioner shall have power to examine into the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, . . . the fares and rates charged by it, the value of its physical property, . . . the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations,

its compliance with all applicable state and federal laws . . . , its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations.

HAR § 6-80-78 provides in pertinent part:

(a) All agreements concerning access to poles, ducts, conduits, and rights-of-way adopted by negotiation or arbitration, . . . must be submitted to the commission for review and approval.

(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

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

. . . .
(c) 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.

Applicants "agree[d] to waive the ninety-day timeline of

HAR § 6-80-78 in this docket[.]"¹³⁸

¹³⁸Application at 13.

A.

Approving the Commitment of Funds for the Proposed Transfer

Based on this record, the commission makes the following findings and conclusions in support of its approval of the HECO Companies' request to commit funds in the amount of the Proposed Transfer Price (\$47,970,092) pursuant to General Order No. 7:

1. The Proposed Transfer Price is being provided to Hawaiian Telcom in the form of a credit.¹³⁹

2. The Proposed Transfer Price represents a value that Hawaiian Telcom and the HECO Companies agreed to based on the total number of joint poles subject to transfer of ownership as of December 31, 2017, and the depreciated value of the joint poles as of December 31, 2017.¹⁴⁰

3. For the purpose of determining the Proposed Transfer Price, Applicants depreciated the joint poles at a rate of 5% per year.¹⁴¹

4. Applicants assigned a maximum depreciation of 85% to those jointly-owned poles from 1996 and earlier,

¹³⁹Application at 25.

¹⁴⁰Application at 25.

¹⁴¹Application at Exhibit E.

which total 92,946 jointly-owned poles and have a total depreciated pole cost of \$13,302,382.¹⁴²

5. The 85% maximum depreciation amount is derived from the existing JPAs for the islands of Oahu and Hawaii.¹⁴³ The JPA applicable to Oahu is dated November 22, 2005, and was entered into by Hawaiian Telcom, Hawaiian Electric, the City and County of Honolulu, and the State of Hawaii ("Hawaiian Electric JPA").¹⁴⁴ The JPA applicable to the island of Hawaii is dated March 12, 1966,¹⁴⁵ and was originally entered into by the County of Hawaii, what was then known as Hilo Electric Light Company, Limited, and Hawaiian Telephone Company ("HELCO JPA").¹⁴⁶

6. According to Applicants, the HECO Companies and Hawaiian Telcom agreed to the 85% maximum depreciation rate because doing so allowed Hawaiian Telcom to obtain "some value for poles that are greater than 18 years in age (85% maximum depreciation)."¹⁴⁷

¹⁴²Application at Exhibit E.

¹⁴³Applicants Response to CA-SIR-7, filed August 2, 2018.

¹⁴⁴Applicants Response to CA-IR-4 at Attachment 2-1, filed June 21, 2018.

¹⁴⁵Applicants Response to CA-IR-4 at Attachment 2-2, page 20 of 92, filed June 21, 2018.

¹⁴⁶Applicants Response to CA-IR-4 at Attachment 2-2, page 20 of 4, filed June 21, 2018.

¹⁴⁷Applicants Response to CA-SIR-7, filed August 2, 2018.

7. The Consumer Advocate asserts that the Proposed Transfer Price is overstated because the total depreciated pole cost of \$13,302,382 for those poles from 1996 and earlier should be reduced by \$12,706,778.78 based on the Consumer Advocate's interpretation and application of the "approved useful life of 25 years for depreciation purposes" in Decision and Order No. 17982 in Docket No. 00-0046.¹⁴⁸ Based on Docket No. 00-0046, the Consumer Advocate states that those jointly-owned poles that have an installation date prior to 1993 should have a "depreciation balance of 'zero' as far as the regulated system of accounts of Hawaiian Telcom is concerned."¹⁴⁹

8. However, Docket No. 00-0046 is distinguishable because the Application filed in that docket sought commission approval of "new depreciation rates and parameters" "that are based on the depreciation study submitted to the Commission on December 1999 as updated and the agreement to be reached at a meeting with the Commission, the Federal Communications Commission ("FCC") and GTE in March 2000."¹⁵⁰ The 25-year useful life for

¹⁴⁸Consumer Advocate SOP at 14.

¹⁴⁹Consumer Advocate SOP at 14.

¹⁵⁰In re GTE Hawaiian Telephone Co. Inc., Docket No. 00-0046, "Application and Certificate of Service," filed February 25, 2000, at 2.

depreciation purposes was derived from an agreement between GTE, the FCC, and the Consumer Advocate.¹⁵¹

9. By contrast, in this docket, the 85% maximum depreciation is based on existing JPAs between Hawaiian Telcom and Hawaiian Electric Company and HELCO. Both of these JPAs address the depreciation amount to be assigned to those poles that are in "serviceable condition" (HELCO JPA)¹⁵² or where replacement of a pole would be "premature" (Hawaiian Electric JPA).¹⁵³

10. These same JPAs provide for a depreciation of 5% per year for jointly-owned poles.¹⁵⁴ The Hawaiian Electric JPA in particular provides a "credit to the owners of the old pole adjustment of rights based on the original unit cost to install the pole, less a depreciation of 5% per year with a maximum of 85% depreciation."¹⁵⁵ This same JPA states in regard to the

¹⁵¹In re GTE Hawaiian Telephone Co. Inc., Docket No. 00-0046, Letter from the Consumer Advocate, filed May 17, 2000, at 4.

¹⁵²Applicants Response to CA-IR-4 at Attachment 2-2, page 20 of 92, filed June 21, 2018.

¹⁵³Applicants Response to CA-IR-4 at Attachment 2-1, pages 17 and 18 of 68, filed June 21, 2018.

¹⁵⁴See Applicants Response to CA-IR-4 at Attachment 2-2, page 20 of 92, filed June 21, 2018 (HELCO JPA); Applicants Response to CA-IR-4 at Attachment 2-1, pages 17 and 18 of 68, filed June 21, 2018 (Hawaiian Electric JPA).

¹⁵⁵Applicants Response to CA-IR-4 at Attachment 2-1, pages 17 and 18 of 68, filed June 21, 2018 (Hawaiian Electric JPA).

"premature replacement of a pole or pole line": "There shall always be a 15% remaining value of the pole, regardless of the age of the pole, providing the pole is in fair or better condition."¹⁵⁶

11. Clearly, by providing for both a depreciation of 5% per year and maximum depreciation of 85%, the JPAs contemplated situations where a jointly-owned pole could have a useful life beyond 18 years and, in light of the Hawaiian Electric JPA, provided for compensation through a credit to other joint owners when a pole is "premature[ly]" replaced.¹⁵⁷

12. Although these maximum depreciation provisions in the Hawaiian Telcom JPA and HELCO JPA do not specifically address a transfer of ownership in the jointly-owned poles from one joint owner to another, the commission finds it reasonable to rely on these maximum depreciation provisions for those poles that have otherwise fully depreciated yet are still in "serviceable condition" (HELCO JPA) or in "fair or better condition" (Hawaiian Electric JPA). In other words, the commission finds and concludes it is unreasonable to require Hawaiian Telcom to sell its interest in the jointly-owned poles with an

¹⁵⁶Applicants Response to CA-IR-4 at Attachment 2-1, pages 17 and 18 of 68, filed June 21, 2018 (Hawaiian Electric JPA).

¹⁵⁷See Applicants Response to CA-IR-4 at Attachment 2-2, page 20 of 92, filed June 21, 2018 (HELCO JPA); Applicants Response to CA-IR-4 at Attachment 2-1, pages 17 and 18 of 68, filed June 21, 2018 (Hawaiian Electric JPA).

installation date prior to 1994 for zero cost, as proposed by the Consumer Advocate,¹⁵⁸ when these same poles that are otherwise fully depreciated will be used by the HECO Companies to generate future revenue from Hawaiian Telcom¹⁵⁹ and other third-party attachers from these same poles.

Comparatively, Docket No. 00-0046 merely set the depreciation rates for GTE Hawaiian Telephone.¹⁶⁰ The commission did not set a requirement that GTE Hawaiian Telephone's assets must be sold at exactly book value when the buyer utility will be generating future revenue from GTE Hawaiian Telephone in part by using GTE Hawaiian Telephone's fully depreciated assets, and the buyer utility states that it expects future revenue from the sold assets to exceed the purchase price. Therefore, Docket No. 00-0046 is distinguishable based on the unique situation presented by this docket.

13. Moreover, the HECO Companies state that revenue from the poles will offset the Proposed Transfer Price and other related costs.¹⁶¹

¹⁵⁸Consumer Advocate SOP at 17.

¹⁵⁹See Application at Exhibit E.

¹⁶⁰Decision and Order No. 17982 at 9.

¹⁶¹HECO Companies Reply SOP at 9-10 (citing Application at Exhibit E); Applicants Response to CA-IR-15.b ("The attachment and ancillary revenues received from Hawaiian Telcom and other third-party attachers will offset any incremental

14. Together with the benefits that the Proposed Transfer will bring, as detailed above in Section I.G, the commission finds and concludes that the Proposed Transfer, including the Proposed Transfer Price, is reasonable and consistent with the public interest.

15. Accordingly, the commission approves the HECO Companies' request to commit funds in the amount of the Proposed Transfer Price for the Proposed Transfer.

16. However, given that the commission's determination that the Proposed Transfer Price is reasonable is in large part due to the expectation that revenues from the poles will offset any incremental costs, the commission may make appropriate adjustments to each of the HECO Companies' revenue requirements in future rate cases if this offsetting does not materialize to the degree represented by the HECO Companies.

O&M costs to manage and maintain the transferred poles and related equipment, depreciation costs of transferred poles and related equipment, and the authorized return to the [HECO] Companies shareholders.")).

B.

Approving the Agreements

Based on this record, the commission makes the following findings and conclusions in support of its approval of the Agreements (the Asset Transfer Agreement, PLA, and Amendment to the JPAs) pursuant to HAR § 6-80-78:

1. The Asset Transfer Agreement between Hawaiian Telcom and the HECO Companies formalizes the terms, conditions, and obligations under which Hawaiian Telcom will sell, assign, transfer, and convey all of its rights, titles, ownership, equity and all other interest(s) in and to all of the utility poles, and the terms, conditions, and obligations under which the HECO Companies will acquire all of those utility poles and equipment.¹⁶²

2. The PLA sets forth the terms and conditions governing non-exclusive licenses that the HECO Companies would grant to Hawaiian Telcom for the installation, use, and maintenance of communications equipment owned by Hawaiian Telcom and its wholly-owned subsidiaries and affiliates used solely for the provision of communications services by Hawaiian Telcom.¹⁶³

¹⁶²Application at 28, Exhibit A.

¹⁶³Application at 29.

3. Among other things, the PLA states that an annual license fee, inclusive of revenue taxes, totaling \$5,050,000 shall be paid by Hawaiian Telcom to the HECO Companies.¹⁶⁴

4. The annual license fee shall be deducted from the Credit Memo until the Credit Memo balance is zero.¹⁶⁵ At that time, the annual license fee will be paid in cash by Hawaiian Telcom to the respective HECO Company.¹⁶⁶

5. The PLA has a term of 10 years, and Hawaiian Telcom has the right to extend the 10-year term for two additional 5-year terms.¹⁶⁷

6. The Amendments to the JPAs are intended to amend each JPA to account for the change in ownership of Hawaiian Telcom's equity interests in the poles it jointly owns with the HECO Companies.¹⁶⁸

¹⁶⁴Application at Exhibit B.

¹⁶⁵Application at Exhibit B. Again, the "Credit Memo" is established by the Master Agreement and consists of the Proposed Transfer Price less deductions. Applicants Response to CA-IR-2.a at Attachment 1, filed June 21, 2018.

¹⁶⁶Application at Exhibit B.

¹⁶⁷Application at 29.

¹⁶⁸See Application at Exhibit C.

7. The Agreements were negotiated between Hawaiian Telcom and the HECO Companies.¹⁶⁹

8. There is no evidence in the record to support the conclusion that any of the Agreements discriminate against a telecommunications carrier not a party to the Agreements.¹⁷⁰ Instead, the Agreements collectively address the transfer of Hawaiian Telcom's ownership interest in the joint poles to the HECO Companies, and Hawaiian Telcom's post-transfer lease arrangement with the HECO Companies.¹⁷¹

9. Moreover, in connection with the PLA, Applicants state that the PLA does not in any way limit the HECO Companies from entering into agreements with other third-parties regarding the use of the HECO Companies' poles, nor does it create or grant Hawaiian Telcom any property rights in any of the HECO Companies' poles, nor does the PLA allow Hawaiian Telcom to grant attachment sublicenses to other telecommunication service providers for equipment they own.¹⁷² In fact, the HECO Companies state that they are currently

¹⁶⁹See generally Application at Exhibits A-C; Hawaiian Telcom Reply SOP; HECO Companies Reply SOP; see also HAR § 6-80-78(b)(1).

¹⁷⁰See HAR § 6-80-78(b)(1)(A).

¹⁷¹See Application at Exhibits A-C.

¹⁷²Application at 29 and Exhibit B.

finalizing the terms of a template Master Licensing Agreement for wireline and wireless attachments on electric distribution poles with, among other telecommunications companies, Verizon, AT&T, and Spectrum/Charter Communications.¹⁷³

10. However, the commission makes clear that it expects from the HECO Companies fair and non-discriminatory treatment of utility pole customers going forward because the Proposed Transfer will result in an expansion of the HECO Companies' business into telecommunications.

11. The Consumer Advocate has not asserted that the Agreements are inconsistent with the public interest, convenience, or necessity.¹⁷⁴

12. On the contrary, the Agreements collectively reflect the efforts of both the HECO Companies and Hawaiian Telcom to provide a more efficient and effective administration of the pole infrastructure within the HECO Companies' service territory, which includes the removal of double poles and implementation of current and future technologies such as 4G, LTE, and 5G networks, all of which will benefit the State of Hawaii.¹⁷⁵

¹⁷³Applicants Response to CA-IR-12, filed June 21, 2018.

¹⁷⁴See HAR § 6-80-78(b)(1)(B); see generally Consumer Advocate SOP.

¹⁷⁵See supra Section I.G.

13. The Agreements are thus consistent with the public interest, convenience, or necessity.¹⁷⁶

14. Accordingly, pursuant to HAR § 6-80-78, the commission approves the Agreements, which are attached as Exhibits A to C of the Application and consist of the Asset Transfer Agreement, the PLA, and the Amendments to the JPAs.

C.

Approving the Proposed Accounting and Ratemaking Treatment

Based on this record, the commission makes the following findings and conclusions in support of its approval of Applicants' proposed accounting and ratemaking treatment in connection with the Proposed Transfer:

1. Rather than exchange cash, the Proposed Transfer involves the HECO Companies providing a credit to Hawaiian Telcom equal to the Proposed Transfer Price of \$47,970,092.¹⁷⁷

2. Certain offsetting amounts and deductions provided for in the Master Agreement, as detailed supra in Section I, will be deducted from this credit.¹⁷⁸

¹⁷⁶See HAR § 6-80-78(b)(1)(B).

¹⁷⁷Application at 25; Applicants Response to CA-IR-2.a at Attachment 1, filed June 21, 2018 (Master Agreement).

¹⁷⁸Applicants Response to CA-IR-2.a at Attachment 1, filed June 21, 2018.

3. The Master Agreement establishes a "Credit Memo" for the net amount of the Proposed Transfer Price.¹⁷⁹ Hawaiian Telcom is not entitled to the payment of cash in the amount of the Credit Memo.¹⁸⁰ According to the Master Agreement, once the balance of the Credit Memo is zero, payment for all outstanding and incurred attachment fees, along with other payments, will be made in cash as set forth in the agreements between Hawaiian Telcom and the HECO Companies.¹⁸¹

4. The credit established by the Proposed Transfer thus allows Hawaiian Telcom to defer actual cash payments to the HECO Companies until the Credit Memo balance is zero, and the HECO Companies will not need to obtain \$47,092,040 in cash to effectuate the Proposed Transfer.

5. Hawaiian Telcom will be accounting for the new arrangement post-transfer as a lease of property for the space utilized on existing poles at the time of transfer. Hawaiian Telcom will also accrete interest on the liability to the HECO Companies through recognition of interest expense on an

¹⁷⁹Applicants Response to CA-IR-2.a at Attachment 1, filed June 21, 2018.

¹⁸⁰Applicants Response to CA-IR-2.a at Attachment 1, filed June 21, 2018.

¹⁸¹Applicants Response to CA-IR-2.a at Attachment 1, filed June 21, 2018.

ongoing basis.¹⁸² However, and most significantly, Hawaiian Telcom does not expect that the Proposed Transfer will have a significant impact on Hawaiian Telcom's results of operations, there will be no impact to Hawaiian Telcom's recorded revenues or level of profitability, and Hawaiian Telcom will not attempt any level of cost recovery in customer rates.¹⁸³

6. For accounting purposes:

A. The HECO Companies will be recording the Proposed Transfer Price as plant in service at each respective company and record a credit to Hawaiian Telcom.¹⁸⁴ The plant in service amount will be depreciated based on the commission-approved depreciation rates and following current company practices.¹⁸⁵

B. The credit will be reduced by certain deductions (\$19,063,667 as a settlement for prior billings and \$6,400,000 for unbilled poles) and annual payments of \$5,050,000 made over a ten-year period. The deductions will be recorded as a deferred credit and amortized as other operating revenue over a three-year period, beginning when the rates approved in a

¹⁸²Application at Exhibit E.

¹⁸³Application at Exhibit E.

¹⁸⁴Application at Exhibit E.

¹⁸⁵Application at Exhibit E.

subsequent rate case become effective.¹⁸⁶ The annual payments will be included as revenue.¹⁸⁷

C. The credit will be reduced until the balance is zero, whereupon Hawaiian Telcom will make cash payment for the annual fees.¹⁸⁸

D. Revenue derived from other third-party attachers will be recorded as other operating revenue, and costs to maintain the poles will be included as normal maintenance expenses of the utility. Incremental pole maintenance costs will be offset with attachment revenues.¹⁸⁹

7. The commission finds and concludes that Applicants' accounting treatment is reasonable because, by having Hawaiian Telcom treat the agreement as a lease, as well as recording the transfer price as a credit balance on each of the HECO Companies' books against which future revenues from Hawaiian Telcom will be used to deplete that credit balance, both Hawaiian Telcom and the HECO Companies will be able to realize the Proposed Transfer without significant disruptions to their near-term cash flows.

¹⁸⁶Application at Exhibit E.

¹⁸⁷Application at Exhibit E.

¹⁸⁸Application at Exhibit E.

¹⁸⁹Application at Exhibit E.

8. For ratemaking purposes:

A. The HECO Companies will not be requesting cost recovery associated with the Proposed Transfer Price.¹⁹⁰

B. Instead, the HECO Companies will be recording the Proposed Transfer Price as plant in service at each respective company their respective share of the Proposed Transfer Price, and the Proposed Transfer Price will be depreciated based on the commission-approved depreciation rates and following current company practices (beginning January of the following year).¹⁹¹

C. The HECO Companies will include in other operating revenue in each of the HECO Companies' next rate cases, one-third of the estimated fee for unbilled poles (\$6,400,000 in total) the HECO Companies will receive from Hawaiian Telcom for use of the poles, without being billed for its share of the cost of the poles in the 2012 to 2017 time period.¹⁹²

D. The HECO Companies will include the annual attachment fees (\$5,050,000 in total) from Hawaiian Telcom for use of the poles in other operating revenue.¹⁹³

¹⁹⁰Applicants Response to CA-IR-15, filed June 21, 2018.

¹⁹¹Application at Exhibit E.

¹⁹²Application at Exhibit E.

¹⁹³Application at Exhibit E.

E. The HECO Companies will include all attachment and ancillary revenues obtained from cable service providers, small cell wireless carriers, fiber service providers, and other service providers or users as other operating revenue.¹⁹⁴

9. The Consumer Advocate asserts that the Proposed Transfer Price should be recorded as a below the line account by the HECO Companies and thus not be recoverable from their ratepayers.¹⁹⁵

10. However, the commission determines that requiring the HECO Companies to record the Proposed Transfer Price as a below the line account is unreasonable when the HECO Companies will also be recording future revenues derived from the Proposed Transfer as an above the line account, and when the HECO Companies state that revenue from these poles will offset the Proposed Transfer Price and other related costs.¹⁹⁶ The commission thus finds the

¹⁹⁴Application at Exhibit E.

¹⁹⁵Consumer Advocate SOP at 23.

¹⁹⁶HECO Companies Reply SOP at 9-10 (citing Application at Exhibit E; Applicants Response to CA-IR-15.b ("The attachment and ancillary revenues received from Hawaiian Telcom and other third-party attachers will offset any incremental O&M costs to manage and maintain the transferred poles and related equipment, depreciation costs of transferred poles and related equipment, and the authorized return to the [HECO] Companies shareholders.")).

Consumer Advocate's assertion unpersuasive based on the unique circumstances of this docket.

11. The commission agrees with the Consumer Advocate that Hawaiian Telcom's payments made to the HECO Companies, even if only in the form of a credit that will be used to deplete a credit in the amount of the Proposed Transfer Price, should be recognized as other revenues so that those revenues can offset the operating and maintenance expenses that will be incurred by the HECO Companies associated with the applicable utility poles.¹⁹⁷ The HECO Companies have no objection to the Consumer Advocate's suggestion so long as the Proposed Transfer Price is recorded above the line.¹⁹⁸

12. Based on the foregoing and subject to the condition below, the commission finds as reasonable the accounting and ratemaking treatment proposed by Applicants.

13. In making this determination, the commission underscores that its finding of reasonableness as to ratemaking treatment is based in large part on the HECO Companies' statements that they project that future revenue associated with these poles will offset the Proposed Transfer Price and related expenses, including O&M expenses.

¹⁹⁷See Consumer Advocate SOP at 12.

¹⁹⁸HECO Companies Reply SOP at 12.

14. As such, the commission also finds reasonable the HECO Companies' suggestion to file an annual report with the commission detailing all attachment and ancillary/other revenues, incremental O&M expenses, double pole remediation expenses, depreciation of Hawaiian Telcom's joint pole equity ownership interest transferred, taxes other than income, income taxes, authorized return on incremental pole assets, and the net amount, as provided in the Application at 36-37.

15. This annual report shall be due by March 31 of each year for the preceding year, for ten years.

D.

Addressing the Master Agreement

1. Among other things, the Master Agreement establishes:

A. The Proposed Transfer Price (\$47,970,092, in the form of a "credit");

B. The manner in which the Proposed Transfer Price was calculated ("[T]he total number of Joint Poles subject to transfer of ownership as of December 31, 2017, and . . . the depreciated value of the Joint Poles as of December 31, 2017."); and

C. Certain offsetting amounts and deductions to the Proposed Transfer Price.¹⁹⁹

2. According to Applicants, commission approval of the Master Agreement is unnecessary because they view the Master Agreement as a "private settlement agreement between two litigants that happen to be public utilities."²⁰⁰

3. Through their Application, Applicants request that the commission approve their request to commit funds in the amount of the Proposed Transfer Price under General Order No. 7 and HRS § 269-19.²⁰¹

4. As set forth above, the commission approves the Proposed Transfer and the Proposed Transfer Price pursuant to HRS § 269-19, to the extent applicable.

5. The Proposed Transfer includes the transfer of all of Hawaiian Telcom's rights, titles, interests, and ownership in all of its jointly-owned poles to the HECO Companies in exchange for the HECO Companies providing Hawaiian Telcom with a credit worth \$47,970,092, which represents the value of Hawaiian Telcom's ownership equity interest in its jointly-owned poles, and is based

¹⁹⁹Applicants Response to CA-IR-2.a at Attachment 1, filed June 21, 2018.

²⁰⁰Applicants Response to CA-SIR-6, filed August 2, 2018.

²⁰¹Application at 2, 11-12.

on the total number of joint poles subject to transfer to the HECO Companies and the depreciated value of the joint poles as of December 31, 2017.²⁰²

6. Because the purpose of HRS § 269-19 is to safeguard the public interest, and the commission is already considering whether the Proposed Transfer, including the price, is in the public interest, the commission does not further address the extent of the applicability of HRS § 269-19.²⁰³

E.

Addressing IBEW Local 1357's Letters

1. IBEW Local 1357 is not a party nor a participant in this proceeding. HAR § 6-61-57(3)(A) mandates:

(3) A motion to intervene or participate shall be served on all parties and the consumer advocate and filed, in the proceedings other than those specified in paragraphs (1) or (2), no later than:

(A) Twenty days after an application is filed[.]

²⁰²Application at 25.

²⁰³See In re Kalaeloa Water Co., Docket No. 2013-0134, Decision and Order No. 34849, filed September 29, 2017, at 23-24.

2. IBEW Local 1357 did not file a motion to intervene or participate, and the Application was filed on March 27, 2018.²⁰⁴ Therefore, the commission declines to address the issues raised by IBEW Local 1357 who is not a party nor a participant in this proceeding.

3. Moreover, the CBA question that IBEW Local 1357 presented to the commission is outside the scope of the commission's jurisdiction. As the commission recently said in In re Cincinnati Bell Inc., Docket No. 2017-0208, "IBEW's asserted interests in its CBA . . . are contractual in nature and are not subject to the commission's regulation of Hawaiian Telcom."²⁰⁵

²⁰⁴The commission notes that IBEW Local 1357 is clearly aware of the commission's procedural rules because IBEW Local 1357 filed a Motion to Intervene on August 29, 2017, in In re Cincinnati Bell Inc., Docket No. 2017-0208. The Application in Docket No. 2017-0208 was filed on August 11, 2017.

²⁰⁵In re Cincinnati Bell Inc., Docket No. 2017-0208, "Order No. 34854 (1) Establishing Statement of Issues; (2) Addressing Motions to Intervene; and (3) Instructing the Parties to Submit a Proposed Procedural Order," filed October 2, 2017, at 22.

III.

Orders

THE COMMISSION ORDERS:

1. Applicants' request to transfer Hawaiian Telcom's ownership of its shares in the joint poles to the HECO Companies is approved.

2. Applicants' request to commit funds in excess of \$2,500,000, excluding contributions, for the HECO Companies to commit funds to acquire Hawaiian Telcom's joint pole equity ownership shares, valued at \$47,970,092, is approved.

3. Applicants' request for approval of the Agreements (Asset Transfer Agreement, Pole Licensing Agreement, and Amended Joint Pole Agreements) is granted.

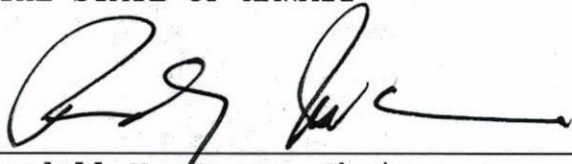
4. Applicants' request to approve the accounting and ratemaking treatment described in Exhibit E of the Application is granted.

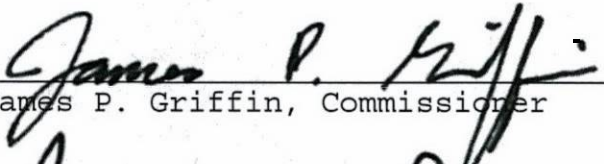
5. The approvals in Ordering Paragraphs 1 to 4 above are subject to the condition that the HECO Companies shall provide to the commission with copy to the Consumer Advocate an annual report that provides total attachment and ancillary revenues, total incremental O&M costs, depreciation costs, and the authorized return to the HECO Companies shareholders. This annual report shall be due by March 31 of each year for the preceding year, for a ten-year period of time.

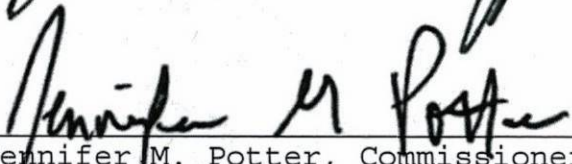
6. This docket is closed, unless ordered otherwise by the commission, except the annual report required by Ordering Paragraph 5 shall be filed in this docket.

DONE at Honolulu, Hawaii OCT 16 2018.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Randall Y. Iwase, Chair

By 
James P. Griffin, Commissioner

By 
Jennifer M. Potter, Commissioner

APPROVED AS TO FORM:


Brandon H. Ito
Commission Counsel

2018-0075.ljk

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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