

HAWAIIAN ELECTRIC INDUSTRIES INC
Form 8-K
November 12, 2003

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K
CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report: November 11, 2003

<u>Exact Name of Registrant</u> <u>as Specified in Its Charter</u>	<u>Commission</u> <u>File Number</u>	<u>I.R.S. Employer</u> <u>Identification No.</u>
Hawaiian Electric Industries, Inc. Hawaiian Electric Company, Inc.	1-8503 1-4955	99-0208097 99-0040500

State of Hawaii

(State or other jurisdiction of incorporation)

900 Richards Street, Honolulu, Hawaii 93813

(Address of principal executive offices and zip code)

Registrant's telephone number, including area code:

(808) 543-5662 Hawaiian Electric Industries, Inc. (HEI)

(808) 543-7771 Hawaiian Electric Company, Inc. (HECO)

None

(Former name or former address, if changed since last report.)

Item 5. Other Events

Hawaii Electric Light Company, Inc. Power Situation

The following is an update of the Hawaii Electric Light Company, Inc. (HELCO, an electric utility subsidiary of HECO) power situation (see HELCO power situation, which is incorporated herein by reference to pages 19 to 22 of HEI's and HECO's Form 10-Q for the quarter ended June 30, 2003):

HELCO has been endeavoring for several years to install at its Keahole power plant two 20 megawatt (MW) combustion turbines (CT-4 and CT-5), followed by an 18 MW heat steam recovery generator (ST-7). As a result of a September 19, 2002 decision embodied in an order dated October 3, 2002 and a final judgment dated November 7, 2002 (the November 7, 2002 Final Judgment) by the Third Circuit Court of the State of Hawaii (Circuit Court), relating to an extension of the construction deadline, the construction of CT-4 and CT-5, which had commenced in April 2002 after HELCO had obtained a final air permit and the Circuit Court had lifted a stay on construction, has been suspended. HELCO appealed this ruling to the Hawaii Supreme Court and also has been pursuing other options that might allow HELCO to complete the installation of CT-4 and CT-5 (including pursuing settlement through court-ordered mediation in a related proceeding and seeking a land use reclassification of the Keahole site from the Hawaii State Land Use Commission).

On October 14, 2003, the Hawaii Supreme Court granted a motion to remand the pending appeal of the November 7, 2002 Final Judgment to the Circuit Court in order to permit the Circuit Court to consider a proposed motion to vacate that judgment. If the judgment is not vacated, then the Hawaii Supreme Court has ordered that the case will be returned to it for further proceedings on the appeal. On October 17, 2003, a motion to vacate the November 7, 2002 Final Judgment was filed by the Keahole Defense Coalition (KDC) and the Hawaii Department of Hawaiian Home Lands (DHHL). The motion was based on an agreement in principle accepted by most, but not all, of the parties to the various proceedings affecting the Keahole power plant and its proposed expansion. HELCO has joined in the motion to vacate. The agreement in principle has now been embodied into a settlement agreement (Settlement Agreement) among the participating parties which was signed by the last of the parties to it on November 6, 2003. The Settlement Agreement will be void if the orders required to effectuate the agreement are not obtained.

If the conditions of the Settlement Agreement are met, including, but not limited to, granting by the Circuit Court of the motion to vacate, then HELCO would be required to undertake a number of actions to mitigate the impact of the power plant in terms of air and noise pollution, potable water and aesthetic concerns, and construction of CT-4 and CT-5 could be restarted in accordance with the terms of the agreement. The actions required of HELCO if the agreement is implemented relate to compliance with the stricter 55 dBA (day time) and 45 dBA (night time) noise limitations, additional landscaping, installation of ST-7 with selective catalytic reduction (SCR) emissions control equipment, operation of an existing CT at Keahole within existing air permit limitations rather than the less stringent limitations in a pending air permit revision, primary use of brackish instead of potable water resources, assisting DHHL in installing solar water heating in its housing projects and in obtaining a major part of HELCO's potable water allocation from the County of Hawaii, facilitating KDC's participation in certain PUC cases, and payment of legal expenses and other costs of various parties to the lawsuits and other proceedings. The Board of Land and Natural Resources of the State of Hawaii (BLNR) has conditionally granted HELCO's request for a 19-month extension of the previous December 31, 2003 construction deadline, subject to court action allowing construction to proceed.

Waimana Enterprises, Inc. (Waimana), a named nominal party to the suit in which the November 7, 2002 Final Judgment was entered, did not file briefs in either the underlying Circuit Court case or on appeal of the November 7, 2002 Final Judgment to the Hawaii Supreme Court and chose not to participate in the mediation that led to the Settlement Agreement. However, Waimana opposed the motion filed in the Hawaii Supreme Court to remand the case to the Circuit Court and, on October 31, 2003 filed a memorandum in opposition to the motion of KDC and DHHL to vacate that judgment. Subsequently, on November 5, 2003, Waimana filed a complaint (Federal Complaint) in the United States District Court for the District of Hawaii (U.S. District Court) in

