

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 YOUNG BROTHERS, LIMITED)
)
 For Approval to: (1) Separate its)
 Intrastate Operations from its)
 Interstate Operations, for)
 Ratemaking Purposes; (2) Increase)
 its General Cargo Loose Rates;)
 and (3) Increase its Selected)
 Palletized Cargo Rates.)
 _____)

DOCKET NO. 02-0236

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

2002 OCT 10 P 3:59

RECEIVED

ORDER NO. 19702

Filed Oct. 10, 2002
At 9:00 o'clock A .M.

Karen Higashi
Chief Clerk of the Commission

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

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of))	
YOUNG BROTHERS, LIMITED)	Docket No. 02-0236
)	
For Approval to: (1) Separate its)	Order No. 19702
Intrastate Operations from its)	
Interstate Operations, for)	
Ratemaking Purposes; (2) Increase)	
its General Cargo Loose Rates;)	
and (3) Increase its Selected)	
Palletized Cargo Rates.)	
_____)	

ORDER

I.

By application filed on August 30, 2002, YOUNG BROTHERS, LIMITED (Young Brothers) seeks commission approval to: (1) separate its intrastate operations from its interstate operations, for ratemaking purposes; (2) increase by 15 per cent, its general cargo loose rates for both dry and refrigerated cargo; and (3) increase by 4.4 per cent, its selected palletized cargo rates for both dry and refrigerated cargo. Young Brothers proposes to increase these selected commodity rates by amending its Local Freight Tariff No. 5-A. Its proposed tariff changes are attached as YB-Exhibit-4 to the application.

Young Brothers' application is supported by its cost of service study filed on June 28, 2002, in Docket No. 01-0255 (cost study).

Young Brothers submits its application in accordance with Hawaii Revised Statutes (HRS) §§ 271G-16, 271G-17, and Hawaii Administrative Rules (HAR) §§ 6-61-94, 6-65-5, and 6-65-30.

A copy of the application was served on the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (Consumer Advocate). On October 2, 2002, the Consumer Advocate filed its position statement.¹ The Consumer Advocate recommends that the commission defer its adjudication of the instant application. In the alternative, it recommends the dismissal of Young Brothers' application, without prejudice.

On October 7, 2002, Young Brothers filed its response in opposition to the Consumer Advocate's position statement.

II.

A.

Suspension and Investigation

The commission may, upon its own initiative or upon the complaint of any interested person: (1) suspend the operation of tariff changes proposed by a water carrier, including changes that propose a new rate or charge; and (2) investigate the proposed changes. HRS § 271G-17(d), HAR § 6-61-40.

¹Certain non-substantive corrections were submitted on October 3, 2002.

B.

Docket No. 01-0255

By Decision and Order No. 19115, filed on December 20, 2001, in Docket No. 01-0255, the commission approved a three-year pilot program establishing a zone of reasonableness for Young Brothers. In this decision and order, the commission also instructed Young Brothers to file a cost study by the second quarter of June 2002, for the commission's review and approval. On June 28, 2002, Young Brothers filed its cost study, under seal, in compliance with Decision and Order No. 19115. The Consumer Advocate has retained its consultants to review and investigate Young Brothers' cost study.²

C.

Consumer Advocate's Position

At the outset, the Consumer Advocate makes clear that it does not object to the separation of the intrastate and interstate components of Young Brothers' operations for ratemaking purposes. It states, however, that such a separation should first await the commission's approval of Young Brothers' cost study. Among other things, the cost study "serves as the basis for allocating common costs between YB's inter- and intra-state operations." Thus, until the cost study is approved, its results "should not be used as a foundation to determine cost allocations and rates."

²See Consumer Advocate's letter, dated August 26, 2002, and filed on August 27, 2002, in Docket No. 01-0255; Consumer Advocate's initial position statement, filed on October 2, 2002, in Docket No. 02-0236, at page 5.

In addition, the Consumer Advocate reasons that any adjudication on the justness and reasonableness of Young Brothers' proposed rate increases prior to the commission's approval of the cost study, is premature. The cost study, the Consumer Advocate notes, "ultimately determines the optimum rate structure that provides the utility an opportunity to earn a reasonable return on investment."

Lastly, the Consumer Advocate states that the requested rate increases, if granted, will exceed the zones established by the commission in Docket No. 01-0255.

D.

Young Brothers' Position

At the outset, Young Brothers notes that the Consumer Advocate's position statement is untimely. Young Brothers further states that: (1) it seeks certain tariff changes, and not a general rate increase; and (2) its cost study "directly affects the rates to be charged for YB's intrastate operations."

That said, Young Brothers states that if a suspension order is issued, the commission will have a maximum of six months to investigate, conduct a hearing, and issue its final order with respect to the proposed tariff changes; otherwise, the proposed changes shall go into effect. HRS § 271G-17(d). Young Brothers contends that the six-month time period "is more than adequate for the Consumer Advocate."

In addition, Young Brothers: (1) makes clear that its proposed tariff changes were not filed in accordance with the

zone established in Docket No. 01-0255; and (2) asserts that any delay by the commission in its adjudication of the subject application "would unreasonably and prejudicially affect YB's operations."

For these reasons, Young Brothers concludes that the commission should reject or disregard the Consumer Advocate's position statement.

E.

Docket No. 02-0236

Upon review, it is clear that the underlying supporting basis for Young Brothers' requests is the cost study filed in Docket No. 01-0255.³ The commission finds, however, that until the Consumer Advocate's and commission's review of the cost study

³For example, at pages 15 - 16 of the application, Young Brothers states:

. . . YB is now seeking to separate its intrastate operations from its interstate operations as requested by the Commission. YB is in agreement with the Commission that its jurisdiction extends only to intrastate commerce for ratemaking purposes. **The underlying supporting documentation is fully described in the cost of service study filed with the Commission on June 28, 2002.**

(Boldface added)

In addition, at page 16 of the application, Young Brothers states in part:

. . . **The cost of service study identified the following unprofitable lines of businesses** (ranked from most unprofitable to least unprofitable):

1. Dry Loose Cargo
2. Dry Palletized Cargo
3. Refrigerated Palletized Cargo
4. G-Vans
5. Refrigerated Loose Cargo

(Boldface added)

is completed, and an acceptable cost study is approved, the parties and commission will not be able to meaningfully proceed with the instant application. Thus, in the commission's view, Young Brothers' application appears premature.

Accordingly, the commission will suspend the operation of the application, including the proposed tariff changes, for a period of six-months, up to and including April 10, 2003. See HRS § 271G-17(b) and (d), HAR § 6-65-40. In addition, the commission will stay the instant docket, pending the commission's disposition of Young Brothers' cost study filed in Docket No. 01-0255.⁴ At the same time, the application will be subject to dismissal without prejudice, by the commission, at any time, and in any event, no later than April 10, 2003.

III.

THE COMMISSION ORDERS:

1. Young Brothers' application, filed on August 30, 2002, including the proposed tariff changes attached as YB-Exhibit-4 to the application, is suspended for a period of six-months, up to and including April 10, 2003, unless ordered otherwise by the commission.

2. The requested changes and rate increases proposed by Young Brothers, including the changes proposed to its Local Freight Tariff No. 5-A, are placed under investigation.

⁴The commission is mindful of the 45-day advance filing requirement governing tariff changes proposed by water carriers. HRS § 271G-17(b), HAR § 6-65-40. Thus, in lieu of outright dismissal without prejudice, the commission, at this time, will stay the instant docket.

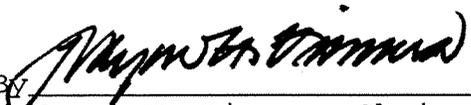
3. Young Brothers shall file the necessary amendments to its Local Freight Tariff No. 5-A, reflecting the suspension directed by this order.

4. The instant docket is stayed, pending the commission's disposition of Young Brothers' cost study filed in Docket No. 01-0255, unless ordered otherwise by the commission.

5. The application will be subject to dismissal without prejudice, by the commission, at any time, and in any event, no later than April 10, 2003, unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii this 10th day of October, 2002.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Wayne H. Kimura, Chairman

By 
Janet E. Kawelo, Commissioner

By _____ (RECUSED)
Gregg J. Kinkley, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 19702 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

LISA M. K. SAKAMOTO
VICE PRESIDENT FINANCE
AND GOVERNMENT AFFAIRS
YOUNG BROTHERS, LIMITED
Pier 40, P. O. Box 3288
Honolulu, HI 96801

J. DOUGLAS ING, ESQ.
WRAY H. KONDO, ESQ.
WATANABE ING KAWASHIMA & KOMEIJI
First Hawaiian Center
999 Bishop Street, 23rd Floor
Honolulu, HI 96813



Catherine Sakato

DATED: October 10, 2002