

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
YOUNG BROTHERS, LIMITED )  
For Approval of Tariff Change to )  
Eliminate Less Than Container Load )  
Service to and from Kahului Harbor )  
on the Island of Maui. )  
Transmittal No. 06-0001. )  
\_\_\_\_\_ )

DOCKET NO. 2006-0120

ORDER NO. 22549

Filed June 21, 2006  
At 12 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

RECEIVED

2006 JUN 22 A 9:07

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

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

K. Higashi

In the Matter of the Application of)  
YOUNG BROTHERS, LIMITED )  
For Approval of Tariff Change to )  
Eliminate Less Than Container Load )  
Service to and from Kahului Harbor )  
on the Island of Maui. )  
Transmittal No. 06-0001. )

Order No. 22549

YOUNG BROTHERS, LIMITED ("Young Brothers" or "YB") is a water carrier authorized to transport property by barge between the islands of Oahu, Hawaii, Kauai, Maui, Molokai, and Lanai. The shipment of goods under its regulated water carrier service is governed by its Local Freight Tariff No. 5-A ("Tariff No. 5-A"), which includes the: (1) commodity rates; (2) sailing schedules for all port destinations; and (3) general rules applicable to all shipments. Presently, there are twelve (12) scheduled departures weekly from Honolulu serving the ports of

Hilo and Kawaihae on the island of Hawaii, Kahului on Maui, Kaunakakai on Molokai, Kaunapali on Lanai, and Nawiliwili on Kauai.

Young Brothers currently consolidates and deconsolidates cargo at the harbors for shippers that do not place their cargo in containers. Such non-containerized cargo is commonly known as less than container load ("LCL") cargo. Presently, LCL cargo constitutes approximately twenty-three percent (23%) of Young Brothers' total cargo volume at Kahului Harbor.

B.

Commission Investigation

On April 17, 2006, Young Brothers filed its Transmittal No. 06-0001, seeking the commission's approval to amend its Tariff No. 5-A by: (1) discontinuing LCL service and rates for the transportation of cargo to and from Kahului Harbor; (2) making other tariff changes to effectuate this proposed discontinuance of LCL service; and (3) making certain other tariff changes for clarity purposes.<sup>1</sup>

Young Brothers proposes to discontinue LCL service to and from Kahului Harbor in order to address the critical shortage of harbor space, made more evident in light of the future

---

<sup>1</sup>Transmittal No. 06-0001, Application for Approval of Tariff Change to Eliminate Less Than Container Load Service to and from Kahului Harbor on the Island of Maui; Exhibits YB-Ex-1 to YB-Ex-12; Verification; and Certificate of Service, filed on April 13, 2006; see also Amended Certificate of Service, filed on April 17, 2006 (collectively, "Transmittal No. 06-0001").

commencement of water carrier service operations by the Hawaii Superferry in 2007.<sup>2</sup> On May 11, 2006, the commission suspended Transmittal No. 06-0001 and opened an investigation to examine the merits of Young Brothers' transmittal.<sup>3</sup> It named as Parties to the proceeding, Young Brothers and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), and as participants, HAWAII TRANSPORTATION ASSOCIATION ("HTA") and WESTERN MOTOR TARIFF BUREAU, INC. ("WMTB").

C.

HFBF's Motion

On May 31, 2006, HFBF filed a motion seeking to intervene, or in the alternative, to participate in this proceeding, pursuant to Hawaii Administrative Rules ("HAR") §§ 6-61-55, 6-61-56, and 6-61-57.<sup>4</sup> In its Motion, HFBF, through the supporting declaration of its President, avers:

---

<sup>2</sup>Young Brothers states that it has been working with the state Department of Transportation "to address critical shortages of harbor space at many of the State's harbor facilities in which YB operates." YB's Transmittal No. 06-0001, at 2. "[T]he critical shortage of harbor space is currently more acute at Pier 2 of Kahului Harbor, being an undersized pier and the island of Maui's only site for receiving and sending inter-island cargo." Id. at 3.

<sup>3</sup>Order No. 22463, filed on May 11, 2006. Interested persons were allowed to file a timely motion to intervene or participate with the commission within twenty (20) days from the date of this Order, pursuant to HAR § 6-61-57(3)(B).

<sup>4</sup>HFBF's Motion to Intervene; Memorandum in Support of Motion ("Memorandum"); Declaration of Dean Okimoto; Exhibit A; and Certificate of Service, filed on May 31, 2006 (collectively, "Motion").

1. HFBF is a grassroots not-for-profit organization of farming families and organizations united for the purpose of: (A) ensuring the future of agriculture in the State; (B) encouraging the adoption of sensible land use and water allocation policies; (C) preserving the State's agricultural land; and (D) promoting the well-being of local farming and the State's economy. "HFBF's guiding policies originate with its members at the county level, and include support of families' and ranchers' efforts to promote greater local consumption of locally-produced commodities, and export of local crops statewide, nationwide, and worldwide."<sup>5</sup>

2. Since its formation in 1948, HFBF has grown to a statewide organization of 1,600 member families in ten (10) local bureaus on every island.

3. HFBF opposes the relief sought by Young Brothers, "and will provide the Commission with the concerns and perspectives of Hawaii's farmers and ranchers who rely on shipping and receiving their products at Kahului Harbor as less than container load cargo."<sup>6</sup>

4. "HFBF, the voice of Hawaii agriculture, should be heard before disturbing the critical lifeline of Hawaii's farmers and ranchers, and disrupting the transport of fresh produce, fruit, flowers, beef, pork, coffee, and other diversified products they provide to the people of Hawaii and the world."<sup>7</sup>

---

<sup>5</sup>Declaration of Dean Okimoto, at 2, ¶ 6.

<sup>6</sup>Declaration of Dean Okimoto, at 1, ¶ 3.

<sup>7</sup>Declaration of Dean Okimoto, at 1, ¶ 2.

5. HFBF and its members are prepared to provide the commission with expertise, testimony, and evidence to show that Young Brothers' proposal will: (A) increase farmers' and ranchers' costs, and reduce their access to supplies, including fencing, gates, feed supplements, and farm inputs such as irrigation supplies, agrochemicals, and fertilizers;<sup>8</sup> (B) make small farmers and ranchers less competitive in the marketplace;<sup>9</sup> (C) impact food safety;<sup>10</sup> (D) increase the problem of invasive species;<sup>11</sup> (E) further reduce the number of available drivers with commercial driver's licenses;<sup>12</sup> and (F) ultimately increase the cost of living for Hawaii.

In its Memorandum, HFBF also asserts:

1. Young Brothers, HTA, and WMTB represent transportation interests, and HTA's and WMTB's members will benefit from the discontinuance of LCL service. These entities do not represent the interests of agriculture, and are unable to provide the commission with information and expertise on the impacts of Young Brothers' proposal on the agricultural community.

---

<sup>8</sup>See HFBF's Memorandum, Section V(A), Farmers' and Ranchers' Costs Will Increase, and Their Markets Will Decrease, at 7 - 10.

<sup>9</sup>See HFBF's Memorandum, Section IV, Water Transportation: The Lifeline of Hawaii Agriculture, at 6 - 7; and Section V(A), at 7 - 10.

<sup>10</sup>See HFBF's Memorandum, Section V(C), Discontinuance of LCL Service Jeopardizes Food Safety, at 10 - 11; and Exhibit A, Food Safety Self Audit Storage & Distribution Center checklist.

<sup>11</sup>See HFBF's Memorandum, Section V(D), The Threat of Invasive Species, at 12 - 14.

<sup>12</sup>See HFBF's Memorandum, Section V(E), Further Scarcity of CDL Drivers, at 14.

2. HFBF will aid the commission in developing a sound record, and its presence will not further expand the issues or delay the proceeding. "Because HFBF is preparing to provide the overall input of Hawaii's agricultural community, its presence will likely help streamline the proceedings, by perhaps obviating the need for each and every farmer and rancher impacted by the proposed change to participate individually."<sup>13</sup>

D.

Stipulation on the Motion

On June 9, 2006, Young Brothers and HFBF filed a stipulation on HFBF's Motion.<sup>14</sup> By their Stipulation, Young Brothers and HFBF agree as follows:

1. On May 31, 2006, HFBF filed a Motion to Intervene, which requests intervention or participation in the above-captioned matter ("**Motion**").
2. HFBF withdraws its request for intervention in this proceeding, and instead requests participation.
3. HFBF respectfully requests participation in this proceeding to assist the Commission in its investigation of Transmittal No. 06-0001 and in developing a sound record.
4. Except for withdrawal of its request for intervention in this proceeding as set forth in paragraph 2 above, HFBF has not waived any of its rights, including but not limited to constitutional, statutory, and/or rights conferred by agency rules.

---

<sup>13</sup>HFBF's Memorandum, at 15 - 16.

<sup>14</sup>Stipulation on HFBF's Motion to Intervene; Attachments A to C; and Certificate of Service, filed on June 9, 2006 (collectively, "Stipulation").

5. Young Brothers supports the participation of HFBBF in this proceeding.
6. [HFBBF's] letter dated June 7, 2006 is attached to this Stipulation as **Attachment A**. The letter sets forth the understanding and commitment of HFBBF and YB with respect to HFBBF's Motion and with respect to YB's Application for Approval of Tariff Change to Eliminate Less than Container Load Service to and from Kahului Harbor on the island of Maui, filed on April 13, 2006, under Transmittal No. 06-0001.
7. Following discussions with [HFBBF], YB has developed a proposed implementation action plan to address concerns of the agricultural community. This work plan is attached as **Attachment B**.
8. HFBBF is additionally cognizant that decisions regarding discontinuation of less than container load service involve entities other than YB. As such, a commitment for discussions to seek implementation actions with harbor users and the State of Hawaii Department of Transportation ("**DOT**") is critical. Such a commitment was provided by DOT and is attached as **Attachment C**.

Stipulation, at 2 - 3, ¶¶ 1 - 8 (boldface in original).

## II.

### Discussion

As HFBBF has agreed to withdraw its motion for intervention and seeks only participant status in this proceeding, the commission will only address the issue of whether HFBBF should be entitled to participate without intervention in this proceeding.

HAR § 6-61-56, which governs participation in commission proceedings, provides:

- (b) A person who has a limited interest in a proceeding may make an application to participate without intervention by filing a timely written motion in



accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57.

(c) The motion shall provide:

- (1) A clear and concise statement of the direct and substantial interest of the applicant;
- (2) The applicant's position regarding the matter in controversy;
- (3) The extent to which the participation will not broaden the issues or delay the proceeding;
- (4) The extent to which the applicant's interest will not be represented by existing parties;
- (5) A statement of the expertise, knowledge or experience the applicant possesses with regard to the matter in controversy;
- (6) Whether the applicant can aid the commission by submitting an affirmative case; and
- (7) A statement of the relief desired.

HAR § 6-61-56(b) and (c). Moreover, regarding the extent to which a participant may be involved in a proceeding, HAR § 6-61-56(a) provides:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

HAR § 6-61-56(a) (emphasis added).

HFBF is a non-profit organization that represents farmers and ranchers that will be impacted should the commission

approve Young Brothers' proposal to discontinue LCL service to and from Kahului Harbor, Maui. As such, the commission finds that HFBBF's participation should assist the commission in its investigation and aid in developing a sound record. Accordingly, the commission grants HFBBF participant status. HFBBF is cautioned that it must follow all applicable rules of the commission, and that the commission will reconsider HFBBF's participation in this docket if, at any time, the commission determines that it is unreasonably broadening the pertinent issues raised in this docket or is unduly delaying the proceeding.

The Parties (Young Brothers and the Consumer Advocate) and Participants (HTA, WMTB, and HFBBF) shall jointly file a new proposed stipulated prehearing order for the commission's consideration no later than June 27, 2006. The proposed stipulated prehearing order shall clearly set forth the proposed role of Participants, if any, in filing any statements of position, and in participating in the evidentiary hearing.<sup>15</sup>

---

<sup>15</sup>On June 13, 2006, Young Brothers, the Consumer Advocate, HTA, and WMTB jointly submitted to the commission their proposed Stipulated Prehearing Order to govern this proceeding, in accordance with Order No. 22463, filed on May 11, 2006. It provides that an amended stipulated prehearing order, including an amended stipulated regulatory schedule, will be submitted, if required by the addition of other parties or participants in this proceeding. See proposed Stipulated Regulatory Schedule, Exhibit A, at 1 n.2. Consistent with Exhibit A, footnote 2, the commission, by this Order, instructs the Parties and Participants (HTA, WMTB, and HFBBF) to jointly file a new proposed stipulated prehearing order. Accordingly, the commission takes no action on the proposed Stipulated Prehearing Order submitted to the commission on June 13, 2006, and instead, will act on the forthcoming new proposed stipulated prehearing order that includes HFBBF.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. HFBF's request to withdraw its motion to intervene is granted.

2. HFBF's motion to participate without intervention is granted.

3. As a participant, HFBF shall adhere to the procedural schedule set forth in the forthcoming prehearing order to be issued by the commission, and it shall be limited to the role set forth in the forthcoming prehearing order to be issued by the commission. Concomitantly, the commission will reconsider HFBF's participation in this docket if, at any time during the course of this proceeding, the commission determines that HFBF is unreasonably broadening the pertinent issues raised or unduly delaying the proceeding.

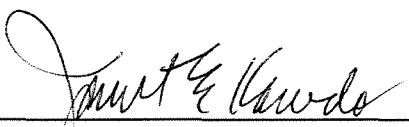
4. No later than June 27, 2006, the Parties (Young Brothers and the Consumer Advocate) and Participants (HTA, WMTB, and HFBF) shall submit a new proposed stipulated prehearing order for the commission's consideration.

DONE at Honolulu, Hawaii JUN 21 2006.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By (EXCUSED)  
Wayne H. Kimura, Commissioner

By   
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

2006-0120.cs

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22549 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

JOHN E. COLE  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

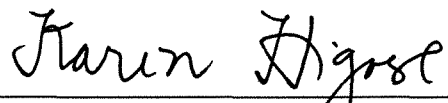
ROY CATALANI  
VICE PRESIDENT, STRATEGIC PLANNING  
AND GOVERNMENT AFFAIRS  
YOUNG BROTHERS, LIMITED  
Pier 40, P. O. Box 3288  
Honolulu, HI 96801

ROBERT E. LEWIS  
WESTERN MOTOR TARIFF BUREAU, INC.  
P. O. Box 30268  
Honolulu, HI 96820

GARETH K. SAKAKIDA  
MANAGING DIRECTOR  
HAWAII TRANSPORTATION ASSOCIATION  
P. O. Box 30166  
Honolulu, HI 96820

ROBERT H. THOMAS, ESQ.  
SAT K. FREEDMAN, ESQ.  
DAMON KEY LEONG KUPCHAK HASTERT  
1600 Pauahi Tower  
1001 Bishop Street  
Honolulu, HI 96813

Counsel for the HAWAII FARM BUREAU FEDERATION

  
\_\_\_\_\_  
Karen Higashi

DATED: JUN 21 2006