

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
YOUNG BROTHERS, LIMITED)
For Approval of a General Rate)
Increase, Rate Restructuring, Fuel)
Price Adjustment Clause, and Other)
Tariff Changes.)
_____)

DOCKET NO. 2006-0396

ORDER NO. 23625

Filed Sept. 4, 2007
At 2 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

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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.

Karen Higashi.

In the Matter of the Application of)
YOUNG BROTHERS, LIMITED)
For Approval of a General Rate)
Increase, Rate Restructuring, Fuel)
Price Adjustment Clause, and Other)
Tariff Changes.)

Order No. 23625

By this Order, the commission instructs the Parties¹ to jointly submit, by September 28, 2007, a supplemental filing that fully explains and provides the supporting bases (calculations, worksheets, data, and all other evidence) or other rationale to justify and support a commission finding that the proposed revenue requirements (revenues, expenses, rate base, and rate of return) set forth in their Stipulation on Settlement of All Issues in this Proceeding, jointly filed by the Parties on July 20, 2007, are just and reasonable.²

²Stipulation on Settlement of all Issues in this Proceeding; Exhibits A - E; and Certificate of Service, filed on July 20, 2007, as clarified on August 3, 2007 (collectively, "Stipulation").

I.

Background

A.

Young Brothers' Application

On October 2, 2006, Young Brothers filed its Notice of Intent to file an application for approval of a general rate increase and for certain revisions to its Tariff 5-A.³

On December 15, 2006, Young Brothers filed its Application requesting the commission's approval of an average, overall rate increase of 10.7 percent for certain types of cargo, based on the 2007 calendar test year and a proposed rate of return of 10.84 percent for its intrastate water carrier operations.⁴ For the specific cargo types, Young Brothers proposes rate increases ranging from 0 to twenty-four percent. Young Brothers also seeks to increase its minimum bill of lading by twenty-four percent. In essence, Young Brothers proposes to restructure its rates to move toward compensatory pricing.

As part of its Application, Young Brothers also proposes to establish: (1) a fuel price adjustment clause for its intrastate operations if the price of diesel fuel increases or

³Young Brothers' Notice of Intent and Certificate of Service, filed on October 2, 2006.

⁴Application of YB for Approval of a General Rate Increase, Rate Restructuring, Fuel Price Adjustment Clause and Other Tariff Changes in Local Freight Tariff No. 5-A, Exhibits YB-Ex-1 to YB-Ex-13; Direct Testimonies YB-DT-100 to YB-DT-800; Verification; and Certificate of Service, filed on December 15, 2006, as amended and supplemented on February 7 and 27 and March 12, 2007 (collectively, "Application"). Young Brothers filed its Application pursuant to HRS §§ 271G-16 and 271G-17, and HAR § 6-61-94, and served copies of its Application upon the Consumer Advocate.

decreases by \$0.15 above or below the per-gallon base level included in its base rates upon thirty days' notice, with prices reconciled on a quarterly basis;⁵ and (2) a minimum charge for twenty-foot and forty-foot platforms. In addition, Young Brothers proposes certain changes to its tariff language, including revisions to the definitions of "automobile" and "island agricultural products." The revisions to Tariff 5-A proposed by Young Brothers to effectuate its requested changes are set forth in Exhibit YB-Ex-1 of its Application.

B.

Written Testimonies and Stipulation

On April 23, 2007, the Consumer Advocate filed its Direct Testimonies and Exhibits, recommending that the commission deny Young Brothers' request to increase its rates.⁶ In the alternative, the Consumer Advocate recommended that any increases in Young Brothers rates be evenly implemented across-the-board.⁷ On May 29, 2007, as supplemented on June 1, 2007, Young Brothers filed its Rebuttal Testimonies and Exhibits.⁸ By its rebuttal,

⁵Young Brothers already applies a fuel surcharge for its interstate operations. See Young Brothers' response to CA-IR-78a.

⁶Consumer Advocate's Direct Testimonies; Exhibits; and Certificate of Service, filed on April 23, 2007.

⁷The Consumer Advocate's Exhibit CA-101 consists of its projected test year estimates, and reflects, in essence, the Consumer Advocate's alternative position.

⁸Rebuttal Testimonies and Exhibits of Young Brothers; and Certificate of Service, filed on May 29, 2007; and Corrections to Rebuttal Testimonies and Exhibits of Young Brothers; and Certificate of Service, filed on June 1, 2007.

Young Brothers essentially maintained the requested relief set forth in its Application, without change.⁹

In June 2007, the Parties commenced negotiations on the possible settlement of some or all of the issues in this proceeding.¹⁰ On June 28, 2007, the Parties informed the commission that they had settled, in principle, all of the issues, and as a result, affirmatively waived the evidentiary hearing, scheduled to commence on July 5, 2007.¹¹ On July 2, 2007, the commission approved the Parties' waiver of the evidentiary hearing.¹²

On July 20, 2007, the Parties filed their Stipulation.¹³ On August 3, 2007, the Parties jointly filed their responses to the commission's clarifying information requests.

By their Stipulation, the Parties agree to an increase in intrastate freight revenues of \$4,391,105, or approximately 7.51 percent over intrastate revenues at present rates, for Young Brothers, based on a rate of return of 10.76 percent and a total intrastate revenue requirement of \$68,893,418 for the 2007

⁹See Young Brothers' response to CA-RIR-6.

¹⁰See Stipulation, at 6 and 41.

¹¹Parties' letter, dated June 28, 2007. The evidentiary hearing, initially scheduled to commence on July 2, 2007, was re-scheduled to July 5, 2007. See Notice of Evidentiary Hearing, dated June 12, 2007; and Order No. 23504, filed on June 22, 2007.

¹²Order No. 23532, filed on July 2, 2007.

¹³The commission approved several requests for extensions of time, ultimately until July 20, 2007, for the Parties to file a settlement agreement. See Order No. 23311, filed on March 16, 2007; Order No. 23504, filed on June 22, 2007; Order No. 23532, filed on July 2, 2007; and Stipulated Order No. 23542, filed on July 12, 2007.

calendar test year. In effect, the Parties recommend that the commission approve: (1) rate increases in the container, straight-load racks, automobiles, and less than container load cargo categories, at various percentages; (2) the implementation of a fuel price adjustment clause, commonly known as a fuel surcharge; and (3) other changes to Young Brothers' Tariff No. 5-A.

C.

Issues

As set forth in Exhibit 1 of Order No. 23311, filed on March 16, 2007, the issues in this proceeding, as agreed-upon by the Parties, are:

1. Whether the general rate increase, rate restructuring, fuel price adjustment clause, and other changes to Young Brothers' Tariff 5-A, as proposed in its Application, are just and reasonable, not unjustly discriminatory, and do not make, give, or cause any undue or unreasonable preference, prejudice, or advantage to any particular person, locality, region, district, island, or description of traffic.

2. Whether the proposed tariff changes support the need, in the public interest, for adequate and efficient transportation service.

3. Whether the proposed tariff changes enable Young Brothers, under honest, economical, and efficient management, to provide transportation services.

II.

Discussion

HRS § 271G-16 provides in relevant part:

Rates, fares and charges of common carriers by water.

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(b) It shall be the duty of every water carrier of property to provide safe and adequate service, equipment, and facilities for the transportation of property and to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property.

(c) All charges made for any service rendered by any water carrier in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any water carrier to make, give, or cause any undue or unreasonable preference or advantage to any particular person, locality, region, district, island, or description of traffic, in any respect whatsoever; or to subject any particular person, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage in any respect whatsoever; provided that this subsection shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(d) Any person or body politic may make complaint in writing to the commission that any such rate, fare, charge, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any individual rate, fare, or charge, demand, charged, or collected by any common carrier or carriers by

water for transportation, or any rule, regulation, or practice whatsoever of the carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful rule, regulation, or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by water carriers, and to prescribe classifications, regulations, and practices relating thereto, the commission shall give due consideration, among other factors, to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service.

(f) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

HRS § 271G-16 (boldface in original).

HRS § 271G-17 states in relevant part:

Tariffs of water carriers. (a) Every water carrier shall file with the public utilities commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information as the commission by regulations shall prescribe; and the commission may reject any tariff filed with it which is not in consonance with this section and with the regulations. Any

tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a water carrier, except after forty-five days' notice of the proposed change filed and posted in accordance with subsection (a); provided that changes to a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change filed and posted in accordance with subsection (a). The notice shall plainly state the change proposed to be made and the time when it will take effect. The commission may in its discretion and for good cause shown allow the change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No water carrier shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever there is filed with the commission any schedule stating a new rate, fare, or charge, for the transportation of passengers or property by a water carrier or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the carrier may on its own initiative, or shall by order of the commission served prior to the effective date of the schedule, concurrently file a pro forma statement of account which shall be prepared under the same form and in the same manner as prescribed by the commission's uniform system of accounts.

The commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule, regulation, or practice, and pending the hearing and the decision thereon the commission, by delivering to the carrier or carriers affected thereby a statement

in writing of its reasons therefor, may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule, regulation or practice. From the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, the commission shall have up to six months to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.

(e) When a rate increase application is filed,

HRS § 271G-17 (boldface in original) (emphasis added). See also HRS § 271G-23 (the burden of justifying the reasonableness of its rates, fares, charges, and classifications is upon the water carrier); HRS § 91-10(5) (except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion); HAR §§ 6-61-94 (water carrier tariff changes); 6-65-5 (water carrier tariff change - posting); and 6-65-30 (water carrier tariff changes or revisions).

The Parties, pursuant to the terms of the Stipulation, acknowledge that the Stipulation is subject to the commission's review and approval, and that the commission is not bound by the Stipulation. In this regard, it is well-settled that an agreement between the parties in a rate case cannot bind the commission, as the commission has an independent obligation to set fair and just rates and arrive at its own conclusion. In re Hawaiian Elec. Co., Inc., 5 Haw. App. 445, 698 P.2d 304 (1985).

Moreover, the burdens of proof and persuasion are upon the water carrier to prove that the proposed increases in its rates, fares, and charges are just and reasonable.¹⁴

Here, the Parties' Stipulation represents a global settlement of all the issues in this proceeding. Thus, the Parties have reached agreement on Young Brothers' proposed revenue requirements (revenues, expenses, rate base, and rate of return), rate design, fuel price adjustment clause, and other changes to Tariff 5-A.

Upon thorough review, the commission finds that the Parties' justification and evidence in support of the stipulated revenue requirements (revenues, expenses, rate base, and rate of return) are incomplete and lacking. Thus, the commission, at this juncture, is unable to complete its independent review to determine whether the stipulated amounts for each of the accounts or categories as well as the stipulated increases in Young Brothers' rates, fares, and charges are just and reasonable and consistent with the public interest. Accordingly, the commission hereby instructs the Parties to jointly submit, by September 28, 2007, a supplemental filing that fully explains and provides the supporting bases (calculations, worksheets, data, and all other evidence) or other rationale to justify and support a commission finding that the proposed revenue requirements (revenues, expenses, rate base, and rate of return) set forth in their Stipulation are just and reasonable.

¹⁴See HRS chapter 271G and HRS § 91-10(5).

III.

Order

THE COMMISSION ORDERS:

The Parties shall jointly submit, by September 28, 2007, a supplemental filing that fully explains and provides the supporting bases (calculations, worksheets, data, and all other evidence) or other rationale to justify and support a commission finding that the proposed revenue requirements (revenues, expenses, rate base, and rate of return) set forth in their Stipulation are just and reasonable.

DONE at Honolulu, Hawaii SEP - 4 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

By Leslie H. Kondo
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Michael Azama
Michael Azama
Commission Counsel

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CERTIFICATE OF SERVICE

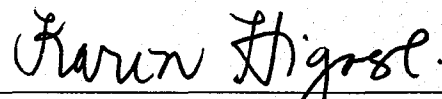
I hereby certify that I have this date served a copy of the foregoing Order No. 23625 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: SEP - 4 2007