

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
                  YOUNG BROTHERS, LIMITED )  
For Approval to Dispose of Barge )  
Aukai. )  
\_\_\_\_\_ )

DOCKET NO. 2008-0269

DECISION AND ORDER

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

PUBLIC UTILITIES  
COMMISSION

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FILED



A.

Young Brothers' Application

By Application filed on October 21, 2008, Young Brothers requests the commission's approval, by November 21, 2008, to: (1) dispose of the Aukai barge via sale; and (2) utilize a one-year amortization period for the anticipated net gain associated with the sale.<sup>2</sup> Young Brothers makes its requests pursuant to HRS § 271G-14 and HAR § 6-61-105.

In support of its Application, Young Brothers explains:

1. The Aukai commenced service in 1970 and was retired in March 2008, following four decades of service.

2. The capacity of the Aukai and two other barges recently retired in September 2008 (the Makoa and Maukana, respectively) "is being replaced by shifting barge assignments and dedicating the two new-built barges (the Ho'omaka Hou, which arrived in October 2007, and the Maka'ala, which arrived in July 2008) and the large leased barge, the Columbia Boston, to the large ports of Nawiliwili, Kawaihae and Kahului. This replacement capacity does not necessarily supplant, one-for-one,

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<sup>2</sup>Application; Exhibits; Verification; and Certificate of Service, filed on October 21, 2008, including certain documents filed under confidential seal (collectively, "Application"). According to Young Brothers, "[t]he sales transaction involved is slated to close on October 23, 2008, with Young Brothers permitted a 30-day extension to acquire required government approvals, such as the required approval from the Commission." Application, at 5 n.1; see also Application, at 7-8.

the capacity of the retired vessels. Rather, Young Brothers has planned the reconfiguration of barge port assignments with the continuing addition of the new-built barges to meet customer sailing needs."<sup>3</sup>

3. The Aukai was recently retired because its load line certificate by the American Bureau of Shipping had expired, and the barge was no longer economical to repair or maintain in service. Furthermore, consistent with Young Brothers' strategic plan, the new barges coming into service allow the water carrier to modify barge assignments and retire older barges.

4. The original cost, additional investment, and net book value ("NBV") of the Aukai, as of March 2008, its retirement date, are:

<u>Original Cost</u>	<u>Additional Investment</u>	<u>NBV</u>
\$112,227	\$2,557,169	\$494,101

5. Young Brothers has identified a potential buyer for the Aukai, Olson Marine, Inc. ("Buyer"), whose business office is located in Alaska. Pursuant to the terms of the draft purchase agreement, Buyer agrees to purchase the Aukai "as is, where is," in Honolulu.<sup>4</sup>

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<sup>3</sup>Application, at 5-6.

<sup>4</sup>Young Brothers submitted the purchase price to the commission under confidential seal. According to Young Brothers, the draft purchase agreement "includes a common term that the purchase price 'is and shall remain confidential for a period of three (3) years, and that during this period neither party shall, without the express written consent of the other, disclose the Purchase Price to any third party.'" Application, at 7.

6. Based on the projected net gain resulting from the sale of the Aukai, Young Brothers proposes an amortization period of one-year.

B.

Consumer Advocate's Position

By its Statement of Position filed on October 29, 2008, as amended, the Consumer Advocate recommends that the commission approve Young Brothers' request to dispose of the Aukai via sale and to record the entire gain from such sale in the year of the sale, subject to the condition that "within 15 days of finalizing the sale of Aukai, YB should be required to submit to the Commission and the Consumer Advocate a copy of the executed sales document and computation of the net gain from the sale to confirm the information presented in the instant application[.]"<sup>5</sup> In support of its position, the Consumer Advocate states that: (1) the Aukai does not appear to be needed for the inter-island transport of goods; (2) Young Brothers should be able to meet its sailing schedule without the Aukai; (3) given the age of the Aukai, the monies spent to-date to retain the use of the Aukai, and the estimated costs to re-certify barges, the proposed sale of the Aukai appears reasonable; and (4) given the nominal amount of the expected gain from the sale, Young Brothers' proposal to record the entire gain in the year of the sale is reasonable.

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<sup>5</sup>Consumer Advocate's Statement of Position; and Certificate of Service, filed on October 29, 2008, at 6; as amended on October 30, 2008.

II.

Discussion

HRS § 271G-14 states in relevant part:

**Transfer of certificates of public convenience and necessity.**

. . . . .  
(b) No water carrier shall sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its property necessary or useful in the performance of transportation services for the public or any certificate of public convenience and necessity; . . . without first having secured from the public utilities commission an order authorizing it so to do, and every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with an order of the commission authorizing the same is void.

. . . . .  
(d) Whenever a transaction is proposed under subsection (b) or (c) of this section, the water carrier or water carriers, or person or persons, seeking approval thereof shall present an application to the commission in such form as the commission may require and the commission may thereupon act upon the application with or without first holding a public hearing; provided that if requested, it shall afford reasonable opportunity for interested parties to be heard. If the commission finds that subject to such terms and conditions as it shall find to be just and reasonable the proposed transaction will be consistent with the public interest, the commission shall enter an order approving and authorizing the transaction, upon the terms and conditions, and with the modifications, so found to be just and reasonable.

. . . . .  
HRS § 271G-14.

The Parties do not affirmatively request that a public hearing be held on Young Brothers' Application, or for a reasonable opportunity to be heard, other than the submission of their written filings.<sup>6</sup> Under the circumstances, the commission finds that Young Brothers' Application is ready for adjudication, without the need for any hearing.

The commission finds that the sale of the Aukai is reasonable and in the public interest. Following approximately thirty-eight years of service and the expiration of its load line certificate, the Aukai is no longer used and useful for the inter-island transport of property. The retirement of the Aukai, moreover, will not appear to detrimentally affect Young Brothers' sailing schedule. The commission, thus, approves Young Brothers' request to dispose of the Aukai, subject to the conditions set forth in Section III, below.<sup>7</sup> The commission, likewise, approves Young Brothers' request to apply a one-year amortization period for the anticipated net gain resulting from the sale.

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<sup>6</sup>See HRS § 271G-14(d).

<sup>7</sup>In approving Young Brothers' request to dispose of the Aukai via sale, the commission notes that it is not necessarily approving, per se, the draft purchase agreement attached to the Application. Rather, the commission is approving Young Brothers' request to dispose of the Aukai, in accordance with HRS § 271G-14. Thus, the commission takes no position on the contracting parties' agreement to refrain from publicly disclosing the purchase price for a period of three years. Instead, the commission notes that such a provision is subject to challenge from interested persons, pursuant to the terms of the Protective Order.

III.

Orders

THE COMMISSION ORDERS:

1. Young Brothers' requests to dispose of the Aukai barge via sale and to apply a one-year amortization period for the anticipated net gain resulting from the sale are approved, subject to the following conditions: within fifteen days of finalizing the sale of the Aukai, Young Brothers shall file with the commission: (A) an executed copy of the purchase agreement; and (B) a final computation of the net gain resulting from the sale of the Aukai.

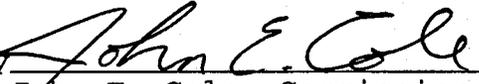
2. The failure to comply with Ordering Paragraph No. 1, above, may constitute cause to void this Decision and Order, and may result in further regulatory action as authorized by State of Hawaii law.

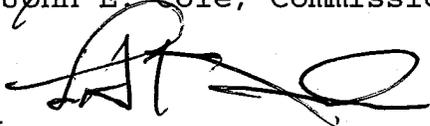
3. Upon the commission's receipt of the executed copy of the purchase agreement and the final computation of the net gain resulting from the sale of the Aukai, this docket shall be considered closed, unless ordered otherwise by the commission.

DONE at Honolulu, Hawaii NOV 13 2008.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Michael Azama  
Commission Counsel

2008-0269.laa

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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