

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 Barges )  
Malana and Kahoku. )  
\_\_\_\_\_ )

DOCKET NO. 2007-0356

DECISION AND ORDER NO. 24055

Filed Feb. 26, 2008  
At 10 o'clock A .M.

Karen Higashi.  
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY  
DEPT. OF LABOR AND  
INDUSTRIAL AFFAIRS  
STATE OF HAWAII

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Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi.

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Docket No. 2007-0356  
Decision and Order No. 24055

DECISION AND ORDER

By this Decision and Order, the commission approves the request of YOUNG BROTHERS, LIMITED ("Young Brothers") to dispose of the Malana and Kahoku barges, via sale to interested buyers, subject to the conditions set forth in Section III, below.<sup>1</sup>

I.

Background

Young Brothers is a water carrier authorized to transport property by barge between the islands of Oahu, Hawaii, Kauai, Maui, Molokai, and Lanai.

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<sup>1</sup>The Parties are Young Brothers and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

A.

Young Brothers' Application

By Application filed on October 23, 2007, Young Brothers requests the commission's approval: (1) to dispose of the barges Malana and Kahoku, via sale to interested buyers; and (2) of their proposed ratemaking treatment of any gains or losses associated with the disposal and sale of both barges.<sup>2</sup> Specifically, in the event of a gain on the sale of the barges, Young Brothers seeks to amortize such gain into income. Conversely, in the event that the net book value ("NBV") is not realized in the sale of the barges, Young Brothers seeks to amortize the amount of such loss into expense.

In support of its Application, Young Brothers explains:

1. The Kahoku commenced service in 1976, while the Malana commenced service in 1977. Both barges were entering their fourth decade of operations when they were retired from service on June 30, 2007, following the expiration of their load line certification by the American Bureau of Shipping ("ABS").

2. Inspections of both barges revealed that an investment exceeding \$1 million per vessel was necessary to qualify both barges for re-certification from the ABS, a requirement by the United States Coast Guard for inter-island service.

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<sup>2</sup>Young Brothers' Application; Exhibits A - B; Verification; and Certificate of Service, filed on October 23, 2007 (collectively, "Application"). Young Brothers makes its request pursuant to HRS § 271G-14 and HAR § 6-61-105.

3. "Young Brothers reasoned that adding the relatively small increment of one year to the barges' useful lives would not justify the cost to refurbish these vessels for re-certification, with the expectation of significant additional annual investment to keep these vessels in service, and concluded that the more prudent course of action is to dispose of the barges."<sup>3</sup>

4. The original cost and NBV of each barge, as of June 30, 2007, their retirement date, are:

| <u>Vessel</u> | <u>Original Cost</u> | <u>NBV</u>  |
|---------------|----------------------|-------------|
| Malana        | \$1,978,521          | \$863,037   |
| Kahoku        | \$955,164            | \$1,501,285 |

In addition, throughout the barges' service tenure, Young Brothers has invested an additional \$2,180,266 in the Malana and \$3,409,799 in the Kahoku, respectively, to extend their useful lives.

5. Young Brothers has retained an independent marine surveyor to appraise the market value of both barges.

6. Young Brothers has not identified any potential buyers at this time. However, because both barges do not possess a load-line certificate and have reached the end of their useful service lives, Young Brothers is not optimistic of its ability to recover the NBV in selling either or both barges. In Young Brothers' assessment:

Ultimately, it will be a matter of whether there is a buyer somewhere in the marketplace that has a specific use for these vessels (i.e., not in the U.S. transportation trade, but possibly for

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

use as a barge used in construction projects). Given this very limited market of potential buyers, once an interested buyer has been identified, timely consummation of the sales transaction would be desirable and likely imperative, since any delay in closing may result in downward pressure on sales price or even loss of the potential sale.

Young Brothers' Application, at 6.

7. Similar to past applications filed by Young Brothers involving the disposal of the Maukana and PT&S 286-1 barges via sale to interested buyers, Young Brothers, in this proceeding, requests the commission's approval to dispose of the Malana and Kahoku barges prior to commencing negotiations and agreeing on the respective purchase prices and terms of payment for both barges.<sup>4</sup>

8. Young Brothers will: (A) use its best efforts in good faith to seek the sale of both barges in an amount not less than the combined NBV of both barges; and (B) submit to the commission a copy of the sales documents setting forth the buyer's identity, the agreed-upon purchase price, terms of payment, and in addition, a computation of the net gain or loss from the sale upon the conclusion of negotiations.

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<sup>4</sup>Young Brothers cites to In re Young Bros., Ltd., Docket No. 02-0201; and In re Young Bros., Ltd., Docket No. 99-0200.

B.

Consumer Advocate's Position

On February 13, 2008, the Consumer Advocate filed its Statement of Position, recommending that the commission approve Young Brothers' request to dispose of the barges Malana and Kahoku, subject to certain reporting requirements.<sup>5</sup>

The Consumer Advocate concurs with Young Brothers' assessment that the two barges are no longer necessary for the water carrier's inter-island operations, and states that the proposed sale of both barges is reasonable, given the ages of the vessels, the funds expended to-date to maintain the vessels, and the anticipated cost of recertification.

The Consumer Advocate recommends that the commission approve the sale of both barges, subject to the following reporting requirements:

1. Until the negotiations for the sale of each barge are completed, Young Brothers shall file semi-annual status reports describing its progress on selling the barges.

2. Young Brothers shall file copies of the sales documents identifying the purchasers, the agreed-upon sales price, and terms of the sales upon completion of the negotiations with the potential buyers. Within fifteen days after finalizing the sale of the barges, Young Brothers shall submit a computation of the net gain or loss, if any, from the sale of each barge.

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<sup>5</sup>Consumer Advocate's Statement of Position; and Certificate of Service, filed on February 13, 2008. Young Brothers will not file a Reply Statement of Position. Telephone conversation between commission counsel and Young Brothers' representative, on February 14, 2008.

The Consumer Advocate reserves its right to state its position on the terms of the sale and the proposed periods over which the gains or losses are to be amortized, for each barge.

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.

In In re Young Bros., Ltd., Docket No. 98-0355, the commission approved Young Brothers' request to sell the Kaholo barge to an interested buyer.<sup>7</sup> In In re Young Bros., Ltd., Docket No. 99-0200, the commission approved Young Brothers' request to sell the Maukana barge on the open market, "as is, where is."<sup>8</sup> Similarly, in In re Young Bros., Ltd., Docket No. 02-0201, the commission approved Young Brothers' request to sell the PT&S 286-1 barge to a prospective buyer, "as is, where is."<sup>9</sup>

In In re Young Bros., Ltd., Docket No. 99-0200, where no prospective buyer was yet identified by Young Brothers, the sale of the Maukana barge was subject to the following conditions:

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<sup>6</sup>See HRS § 271G-14(d).

<sup>7</sup>In re Young Bros., Ltd., Docket No. 98-0355, Decision and Order No. 16647, filed on November 2, 1998.

<sup>8</sup>In re Young Bros., Ltd., Docket No. 99-0200, Decision and Order No. 17152, filed on September 3, 1999.

<sup>9</sup>In re Young Bros., Ltd., Docket No. 02-0201, Decision and Order No. 19922, filed on December 20, 2002.

2. Young Brothers shall submit to the commission and Consumer Advocate, promptly after the terms, conditions, and price for the Maukana's sale are negotiated: (1) a copy of the sales documents, and (2) a report which identifies the buyer, indicates the sales price, and computes the net gain from the sale.

3. This docket will remain open, pending receipt and review of the foregoing documents and report.

In re Young Bros., Ltd., Docket No. 99-0200, Decision and Order No. 17152, Ordering Paragraphs ¶¶ 2 and 3, at 5.

The commission finds that the sale of the barges Malana and Kahoku are reasonable and in the public interest. Following thirty years of service, the barges are no longer used and useful for the inter-island transport of property. Moreover, at the estimated cost in excess of \$1 million per vessel, the repair of both barges for re-certification by the U.S. Coast Guard is not cost-effective, given the age and conditions of the barges, and Young Brothers' projection that the repairs will extend the useful service lives of both barges by only one year. The commission, thus, approves Young Brothers' request to dispose of both barges by sale to interested buyers, subject to the conditions set forth in Section III, below.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. Young Brothers' request to dispose of the barges Malana and Kahoku, via sale to interested buyers, is approved.

2. Young Brothers shall utilize its best efforts in good faith to seek the sale of both barges in an amount not less than the combined net book value of both barges.

3. Within fifteen days after finalizing the sale of the Malana, Young Brother shall file with the commission and the Consumer Advocate: (A) a copy of the sales documents; and (B) a report that identifies the buyer, the agreed-upon sales price, the terms of the sale, and a computation of the net gain or loss, if any, from the sale, including the proposed period of amortization.

4. Within fifteen days after finalizing the sale of the Kahoku, Young Brother shall file with the commission and the Consumer Advocate: (A) a copy of the sales documents; and (B) a report that identifies the buyer, the agreed-upon sales price, the terms of the sale, and a computation of the net gain or loss, if any, from the sale, including the proposed period of amortization.

5. Until the documents and reports set forth in Ordering Paragraphs No. 3 and No. 4, above, are both submitted, Young Brothers shall file semi-annual status reports describing its progress on selling the barge or barges. Unless ordered otherwise, the status reports shall be due by June 30 and December 31 of each year, with the first status report due by June 30, 2008.

6. The failure to comply with the Ordering Paragraphs, above, may constitute cause to void this Decision and

Order, and may result in further regulatory action as authorized by State of Hawaii law.

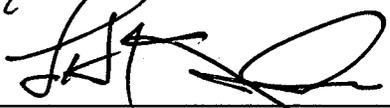
7. This docket will remain open, pending receipt and review of the foregoing reports and documents.

DONE at Honolulu, Hawaii FEB 26 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

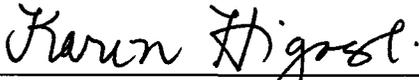
2007-0356.cp

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24055 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI  
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Honolulu, HI 96801

  
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Karen Higashi

DATED: FEB 26 2008