

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

)
YOUNG BROTHERS, LIMITED)

) DOCKET NO. 01-0255

For Allowance of Rate Flexibility)

Within a Reasonable Zone or, in)

the Alternative, for a General Rate)

Increase.)

)

DECISION AND ORDER NO. 24139

Filed April 9, 2008

At 1:30 o'clock P .M.

Karen Higashi.
Chief Clerk of the Commission

Div. of Consumer Protection
Public Utilities Commission
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Karen Higashi.

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DECISION AND ORDER

By this Decision and Order, the commission approves, with modifications as set forth in Section II.B, below, the Stipulation Between Young Brothers, Limited and the Division of Consumer Advocacy Regarding Young Brothers' Rate Flexibility Within a Reasonable Zone, jointly filed by YOUNG BROTHERS, LIMITED ("Young Brothers" or "YB") and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), on December 19, 2007 ("2007 Stipulation").¹

I.

Background

Young Brothers is a water carrier authorized to transport property by barge between the islands of Oahu, Hawaii,

¹The Parties are Young Brothers and the 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).

Kauai, Maui, Molokai, and Lanai. Young Brothers' intrastate water carrier operations are subject to the commission's jurisdiction. The shipment of goods under its regulated water carrier service is governed by its Local Freight Tariff No. 5-A.

A.

Establishment, Extension, and Use of the Zone Program

On August 1, 2001, Young Brothers filed its Notice of Intent for Allowance of Rate Flexibility Within a Reasonable Zone or, in the Alternative, for a General Rate Increase. On October 1, 2001, Young Brothers filed its Application for Allowance of Rate Flexibility Within a Reasonable Zone,² "to establish a practice relating to its rates that will allow YB to continue to have the opportunity to earn a just and reasonable return on the average rate base as authorized by the Commission, without having to proceed through a general rate case in every instance."³ In doing so, Young Brothers declined to seek a general rate increase; instead requesting only approval of a zone practice that would allow Young Brothers to adjust its rates within a reasonable zone set by the commission ("Zone Filing" or "Zone Practice").

²In re Young Bros., Ltd., Docket No. 01-0255, Young Brothers' Application for Allowance of Rate Flexibility Within a Reasonable Zone; Verification; and Certificate of Service, filed on October 1, 2001 (collectively, "Application for a Zone").

³Application for Zone, at 5.

On December 14, 2001, Young Brothers and the Consumer Advocate filed their Stipulation Regarding Young Brothers' Application for Rate Flexibility Within a Reasonable Zone, agreeing to use a zone with a maximum annual increase of 5.5% and a maximum annual decrease of 10% over a twelve-month period ("Zone") under a three-year pilot program ("2001 Stipulation"). On December 20, 2001, the commission approved the 2001 Stipulation, which allowed Young Brothers to adjust its rates within the Zone, without a rate case proceeding, provided that Young Brothers did not exceed its authorized rate of return on its average depreciated rate base.⁴

On June 20, 2002, the commission authorized a 3% rate increase in Young Brothers' non-containerized commodity rates, effective June 20, 2002, pursuant to the Zone.⁵

On December 6, 2004, Young Brothers and the Consumer Advocate filed their Stipulation to Continue Decision and Order No. 19115 Rate Flexibility Within a Reasonable Zone, agreeing to continue the Zone for three additional years, until December 20, 2007 ("2004 Stipulation"). On April 22, 2005, the commission approved the 2004 Stipulation.⁶

⁴In re Young Bros., Ltd., Docket No. 01-0255, Decision and Order No. 19115, filed on December 20, 2001. The three-year pilot program began on December 20, 2001, the effective date of Decision and Order No. 19115.

⁵In re Young Bros., Ltd., Docket No. 02-0118, Decision and Order No. 19425, filed on June 20, 2002.

⁶In re Young Bros., Ltd., Docket No. 01-0255, Decision and Order No. 21768, filed on April 22, 2005.

On June 1, 2005, Young Brothers filed an Application for Approval of 2005 Rate Increase Pursuant to Decision and Order No. 21768, seeking a 5.5% across the board increase through Transmittal No. 16-0605. On July 18, 2005, the commission issued Order No. 21926 approving YB's 5.5% increase, effective July 18, 2005.⁷ On August 4, 2006, Young Brothers filed an application for approval of a tariff change to reflect an across-the-board rate increase of 5.5%, pursuant to its Zone, which the commission approved effective September 18, 2006.⁸

B.

Docket No. 2006-0396

On December 15, 2006, Young Brothers filed an application for approval of an average, overall rate increase of 10.7 percent for certain types of cargo, based on a 2007 calendar test year and a proposed rate of return of 10.84 percent for its intrastate water carrier operations in In re Young Brothers, Ltd., Docket No. 2006-0396. In that docket, the commission addressed the Parties' conflicting interpretations as to when an increase in Young Brothers' rates arising out of a general rate case could take effect, during the period in which the Zone was in effect and utilized by Young Brothers. The commission, in Order No. 23222, filed on January 26, 2007, held:

⁷Order No. 21926, filed on July 18, 2005 (allowing Young Brothers' Transmittal No. 16-0605 to take effect).

⁸In re Young Bros., Ltd., Transmittal No. 06-0002, Decision and Order No. 22856, filed on September 15, 2006.

The Consumer Advocate asserts that under its interpretation of the [2001 and 2004] Stipulations: (1) within a twelve-month period under the Zone, the maximum annual increase in rates entitled to by Young Brothers is 5.5% for any customer class or classes; (2) Young Brothers' maximum 5.5% annual increase under the Zone for all customer classes took effect on September 18, 2006, by Decision and Order No. 22856; and (3) Young Brothers' [subsequent] Application seeking commission approval to increase its rates for certain commodity classifications beyond the 5.5% annual threshold approximately 4.5 month after a 5.5% increase in rates on September 18, 2006, violates the terms of the Stipulation.

Young Brothers counters that under a plain reading of the Stipulations and the commission's decisions approving the Stipulations, the Zone was never intended to be Young Brothers' exclusive rate remedy. Instead, Young Brothers argues that it retains the legal right under Hawaii law to proceed with a full rate proceeding by filing an application for a general rate increase, and to seek to raise its rates by more than 5.5% within a given twelve-month period. Moreover, Young Brothers contends that it never intentionally and voluntarily waived this right, and there is no language in the Stipulations that explicitly or implicitly preclude this right.

Here, it appears that Young Brothers' Application to increase certain of its commodity rates within the twelve-month period between September 18, 2006 (the effective date of [the] 5.5% maximum increase under the Zone) and September 17, 2007, is inconsistent with the spirit, intent, and terms of the Zone.

Accordingly, the commission finds that the plain meaning of the terms of the Stipulations document a voluntary agreement and compromise between Young Brothers and the Consumer Advocate, which the commission approved at Young Brothers' and the Consumer Advocate's request. Specifically, in exchange for a streamlined regulatory review process and the opportunity to obtain virtually automatic maximum annual rate increases of 5.5% over any twelve-month period under the Zone, Young Brothers expressly agreed to the parameters it and the

Consumer Advocate established under the Stipulations. Thus, Young Brothers agreed to forego the opportunity to seek commission approval of additional rate increases that would take effect within the same twelve-month period established by the Zone. Moreover, in Young Brothers' Application for a Zone, Young Brothers stated that the Zone would give it an opportunity to earn a just and reasonable rate of return, "without having to proceed through a general rate increase case in every instance." Thus, Young Brothers' arguments that it never waived its right under Hawaii law to proceed with a full rate case proceeding by filing an application for a general rate increase is without merit as it expressly agreed to the terms of the Stipulations and asked the commission to approve the Stipulations.

Young Brothers has benefited from the Zone by minimizing the time and expense associated with the filing and processing of general rate increase applications. To date, the commission has authorized three rate increases under the Zone, with the most recent rate increase being a 5.5% across the board increase that took effect on September 18, 2006. After having used the Zone to its benefit for several years, and shortly after obtaining a virtually automatic 5.5% across-the-board rate increase under the Zone, Young Brothers now seeks to also increase its rates in a general rate increase application before the expiration of the 12-month period it agreed to under the Zone. In the commission's view, to now authorize Young Brothers to increase certain of its commodity rates on January 29, 2007, or within six months thereafter, would be inconsistent with the expressed terms, as well as the spirit and intent of the Stipulations approved by the commission.

. . . . the Zone does not necessarily prevent Young Brothers from filing an application for a general rate increase in this instance; however, any rate increase approved by the commission shall not take effect until the

expiration of the twelve-month period beginning on September 18, 2006, the date when the 5.5% maximum increase in rates took effect under the Zone.

In re Young Bros., Ltd., Docket No. 2006-0396, Order No. 23222, at 25-33 (footnotes, text, and citations therein omitted) (emphasis in original).

By Decision and Order No. 23714, filed on October 12, 2007, the commission approved: (1) rate increases in Young Brothers' container (2.25% or 4.5%), straight-load racks (4.5%), automobiles (4.5%), and less than container load cargocategories (15%); and (2) the implementation of a fuel price adjustment clause.⁹ The commission also lowered Young Brothers' authorized rate of return, from 11.06 percent to 10.76 percent.

C.

Parties' 2007 Stipulation

On December 19, 2007, one day prior to the scheduled expiration date of the Zone, the Parties filed their 2007 Stipulation. Seeking an effective date of January 1, 2008, the Parties stipulate to the following terms to govern the proposed zone of reasonableness practice (the "New Zone"):

1. Zone of Reasonableness. The Consumer Advocate will not oppose the Commission's extension of Young Brothers' Zone Practice provided that the zone of reasonableness is established as follows:

⁹In re Young Bros., Ltd., Docket No. 2006-0396, Decision and Order No. 23714, filed on October 12, 2007.

a. Commencing with the Effective Date, a maximum overall rate increase threshold of 5.5 percent over the minimum time period set forth below in paragraph 6(a) of this section II is established. For any customer class or classes, a maximum increase threshold of 7.5 percent is established, provided that the maximum overall rate increase threshold of 5.5 percent is not exceeded over the minimum time period set forth below in paragraph 6(a) of this section II, with due consideration given to the following:

i. The Honolulu consumer price index (CPI) today is substantially higher than the CPI at the time of initiation of the original zone practice in 2001;

ii. Young Brothers did not achieve "break-even" rates for certain customer classes in its 2007 general rate case application that was the subject of Docket No. 2006-0396;

iii. The Commission has stated "YB's need to migrate towards the recovery of costs for service provided to its customers" through "rate rebalancing" via a cost of service model that "is intended to distribute the costs of providing service, and the investment utilized in providing the service, across all service offerings for purposes of developing cost based rates"; and

iv. The Consumer Advocate's position is that Young Brothers should, through gradual rate rebalancing, achieve compensatory rates for all lines of service.

b. Commencing with the Effective Date, the maximum decrease of 10 percent over the minimum time period set forth below in paragraph 6(a) of this section II for any customer class or classes be continued (as allowed in the Pilot Program) on the condition that any decrease proposed for a given customer class does not result in non-compensatory rates for the customer class.

2. Term. The Parties agree that Young Brothers' Zone Practice shall remain in effect until terminated either by request of Young Brothers or the Consumer Advocate or by order of the Commission.¹⁰ Thus, the Zone Practice shall no longer be a pilot program.

3. Cost of Service. Young Brothers shall file a cost of service study under protective order by June 30 of each year that the Zone Practice remains in effect to reflect the prior year's results. As in the Pilot Program and in the cost of service model as approved by the Commission, this filing will include a breakdown between regulated and non-regulated revenues, expenses, and plant investment, and should enable the Parties to determine the contribution margin of each of the then existing lines of service, based on current operations that are normalized for rate setting purposes.

4. Notice of Proposed Rate Change Through Zone Practice. As in the Pilot Program, Young Brothers will continue to comply with HRS § 271G-17(b), which specifically provides that:

No change shall be made in any rate, . . . except after forty-five days' notice of the proposed rate change filed and posted . . .

During the 45-day period after notice of a proposed rate change, the Consumer Advocate will have the opportunity to review Young Brothers' proposal and recommend suspension of the proposed change if there are any concerns that cannot be resolved within the 45-day period.¹¹

¹⁰Footnote 3 states: The Parties reserve their right, via a motion for an order to show cause or similar pleading, to revisit continuation of the Zone Practice should circumstances arise in the future that warrant reconsideration of the Zone Practice.

¹¹Footnote 4 states: Should Young Brothers provide more than 45-days' notice of the effective date of any proposed rate change under the Zone Practice, the Consumer Advocate's request for suspension shall be filed prior to the fifteenth day preceding the effective date of the proposed rate change.

5. Documents Supporting Rate Change Through Zone Practice. As in the Pilot Program, Young Brothers will provide the following financial information with its Zone Practice filing:

- a. Prior year financial statements;¹²
- b. Test year financial statements, normalized for rate setting purposes, in the format similar to the monthly financial statements that Young Brothers submits to the Commission;
- c. The impact of the proposed change to Young Brothers' authorized allowed rate of return for the test year;
- d. The impact of the proposed change to the contribution margin, as described in paragraph 3 above, as represented in the most recent cost of service study.¹³

6. Minimum Time Periods Between Rate Increases via Zone Practice.

a. Minimum Time Between Successive Zone Practice Filings. In recognition that (1) under HRS §§ 271G-17(b) and 271G-17(d) and Section 6-61-85, [HAR], Young Brothers may seek Commission approval to adjust its rates with an effective date that is approximately 285 days after notice of the proposed change is posted in accordance with the requirements set forth in HRS § 271G-17(a);¹⁴ and (2) the rate increases that Young Brothers may seek under the Zone Practice is limited to the percentages described above in paragraph 1(a) of this section II, the Parties agree that Young Brothers may seek

¹²Footnote 5 states: The financial statements should include the confidential information supporting Young Brothers' tug operations.

¹³Footnote 7 states: For a general rate case filing, the cost of service model results should be based on the test year revenue requirement data and reflect the impact of the changes sought in the general rate case filing on the most recent cost of service model results.

¹⁴Footnote 8 states: The 285 days is based on the 60 days' notice of intent to file a general rate increase (HAR § 6-61-85) + 45 days' notice (HRS § 271G-17(b)) + 180 days to complete an investigation (HRS [§] 271G-17(d)).

rate increases and/or decreases in a Zone Practice filing to be effective no earlier than ten (10) months (i.e., 285 days = approximately 9.5 months, rounded to 10 months) after the effective date of any decision and order in an immediately preceding Zone Practice filing.¹⁵ In addition, the Parties agree that, for the first year following this Stipulation, Young Brothers may seek a rate adjustment in a Zone Practice filing with an effective date of August 1, 2008. The effective dates of all subsequent filings under the Zone Practice that immediately follow general rate case filings shall be done in accordance with the required time intervals set forth below in paragraph 6(b)(ii) of this section II. By "effective date" of a filing, whether of a general rate case or Zone Practice filing, the Parties mean the effective date of a rate increase or decrease as ordered by the Commission.

b. Minimum Time Between General Rate Case Filing and Zone Practice Filing. In recognition that a rate adjustment filed under a general rate increase application is likely to be in excess of the maximum threshold set forth for the Zone Practice, the Parties agree to the following minimum time intervals between effective dates of such increases in order to address the Consumer Advocate's concern with Young Brothers' customers' ability to sustain the requested percentage increase set forth by Young Brothers in a general rate request:

i. As discussed in paragraph 6(a) of this section II, should Young Brothers elect to seek an increase under the Zone Practice in

¹⁵Footnote 9 states: Within such minimum ten-month periods between Zone Practice filings, Young Brothers may seek the maximum percentage increases in a single Zone Practice filing as described above in paragraph 1(a) of this section II or it may seek such maximum percentage increases in more than one Zone Practice filing in such ten-month period. By way of example and not of limitation, if Young Brothers seeks a 5.5 percent overall increase to be effective on August 1 of year 1 following this Stipulation, Young Brothers may submit another Zone Practice filing for an effective date ten months thereafter, on June 1 of year 2, seeking a 5.5 percent overall increase. However, if Young Brothers seeks, for example, a 3.5 percent increase to be effective on August 1 of year 1, it may seek an additional 2 percent increase to be effective on, for example, December 1 of year 1 and thereafter submit another Zone Practice filing seeking a 5.5 percent overall increase to be effective on June 1 of year 2.

calendar year 2008, Young Brothers may seek rate increases and/or decreases in a Zone Practice filing to be effective no earlier than August 1, 2008.¹⁶

ii. For all filings thereafter, Young Brothers may seek rate increases and/or decreases in a Zone Practice filing to be effective no earlier than one year¹⁷ after the effective date of any decision and order in an immediately preceding general rate case filing (i.e., general rate increase followed by Zone Practice filing).

iii. The same one-year period shall apply, i.e., the Parties agree that Young Brothers may seek rate increases and/or decreases under a general rate case to be effective no earlier than one year after the effective date of a decision and order in the immediately preceding Zone Practice filing (i.e., Zone Practice increase followed by general rate case filing).¹⁸

¹⁶Footnote 10 states: Using the 285-day period as a guideline, July 30, 2008 is 285 days after the Commission's Order No. 23745, dated October 19, 2007, in Docket No. 2006-0396 (effectuating Young Brothers' revised tariff sheets and rate schedules). For administrative convenience, the Parties agree to move this date forward to the first of the following month, being August 1, 2008.

¹⁷Footnote 11 states: Although the Parties understand that the statutory framework for water carriers allows for an earlier effective date for a general rate increase filing, the Parties agree to recognize and put into effect a one-year limitation in response to the Consumer Advocate's concerns[.]

¹⁸Footnote 13 states: Within such minimum one-year periods between the effective date of a Zone Practice filing and the effective date of a general rate case filing, Young Brothers may seek the maximum percentage increases in a single Zone Practice filing as described above in paragraph 1(a) of this section II or it may seek such maximum percentage increases in more than one Zone Practice filing in such one-year period. By way of example and not of limitation, Young Brothers may seek a 5.5 percent overall increase to be effective on August 1 of year 1 following this Stipulation. However, if YB seeks, for example, a 3.5 percent increase to be effective on August 1 of year 1, it may seek an additional 2 percent increase to be effective on, for example, December 1 of year 1 and thereafter file a general rate case seeking an effective date of August 1 of year 2.

c. No Effect on Other Statutory Rate Relief Rights. Except as expressly limited by this Stipulation, Young Brothers' statutory rights to seek rate relief (or rate adjustments) are not in any way affected or limited by this Stipulation.

2007 Stipulation, at 3-8 (footnotes 1, 2, 6, and 12, text, and citation therein omitted) (boldface in original).

D.

Parties' Joint Response

On December 24, 2007, the commission issued PUC-IR-101 to Young Brothers, instructing Young Brothers to "state in detail the specific facts, information, and data in support of the Parties' apparent position that the [2007] Stipulation is consistent with [HRS] chapter 271G, including HRS § 271G-2, and the public interest." On February 5, 2008, the Parties filed their Joint Response to PUC-IR-101 ("Joint Response"), asserting that the Stipulation is consistent with HRS chapter 271G, including HRS §§ 271G-2, 271G-16, and 271G-17, and the public interest because it retains the essential elements of the previous Zone. Specifically, the New Zone retains:

1. The same range as the previous Zone - a maximum overall rate increase of 5.5 percent and a maximum overall rate decrease of ten percent - provided that Young Brothers' authorized rate of return of 10.76 percent is not exceeded.
2. The same 45-day notice of any proposed rate change as under the previous Zone.

3. The same financial information filing requirements as under the previous Zone.

4. The requirement that Young Brothers file a cost of service study reflecting the prior year's results, under protective order, by June 30th of each year, so long as the New Zone remains in effect.

The Parties contend that these four elements, which are retained in the New Zone:

1. Provide a more streamlined regulatory process to the ultimate benefit of Young Brothers' customers, eliminates much of the regulatory lag for rate adjustments within a reasonable zone, and reduces the substantial costs associated with the regulatory process for the commission, the Consumer Advocate, and Young Brothers. The New Zone provides Young Brothers with a better opportunity to timely generate sufficient revenues to enable the water carrier to provide the transportation services required by its customers.

2. Improve the level of service to customers by providing Young Brothers greater rate flexibility, within acceptable limits, to be more responsive to customers' needs and meet the increasing competition primarily from interstate water carriers, which are not subject to the commission's regulation.

3. Continue to ensure that there is reasonable protection of the public interest.

4. "[P]rovide the same benefits as supported by the record and the Commission's decisions in this docket and has been borne out by the history of and the Commission's decisions regarding the reasonableness of the current Zone Practice pilot program."¹⁹

In addition to retaining these four specified elements, the Parties state that the 2007 Stipulation makes three modifications to the New Zone which further the purposes of HRS chapter 271G, including HRS § 271G-2, and the public interest, in light of the Parties' experience under the previous Zone. Specifically, the New Zone incorporates the following three additional elements:

1. Establishes a maximum increase of 7.5 percent for any customer class or classes, provided that the maximum overall rate increase of 5.5 percent is not exceeded. Young Brothers will be unable to make substantial progress towards the commission's mandated rate rebalancing, unless it has some flexibility in distributing costs over customer classes while achieving an overall 5.5 percent increase.

2. Explicit minimum time periods between rate increases via Young Brothers' Zone Practice, thus recognizing "a public interest concern that some of Young Brothers' customers may not be able to readily sustain potential increases that may be proposed in general rate requests and addresses this concern

¹⁹Joint Response, at 10.

by encouraging [Young Brothers] to seek smaller rate increases via the proposed Zone Practice."²⁰

Pursuant to existing State of Hawaii law, Young Brothers could conceivably file general rate requests, the effective dates of which could be 285 days, or approximately 9.5 months, apart. Given this statutory time frame for general rate requests and the desire to encourage Young Brothers, to the extent feasible, to limit future proposed rate increases to the previous and currently proposed cap of 5.5 percent under the Zone Practice, the Parties stipulate to the minimum time periods proposed in the 2007 Stipulation; provided that "for the first year following this Stipulation, Young Brothers may seek a rate adjustment in a Zone Practice filing with an effective date of August 1, 2008."²¹

3. The Zone Practice shall "remain in effect until terminated either through a request of Young Brothers or the Consumer Advocate followed by an appropriate order of the Commission or otherwise through an appropriate order of the Commission employing its authority under HRS chapter 271G."²² In effect, the Parties propose that the Zone Practice, after two three-year pilot periods, become permanent and no longer be a pilot program.

²⁰Joint Response, at 12-13.

²¹Joint Response, at 14.

²²Joint Response, at 11.

II.

Discussion

Young Brothers operates as an inter-island water carrier of property in accordance with the Hawaii Water Carrier Law, HRS chapter 271G.

HRS § 271G-2 states:

Declaration of policy. The legislature of this State recognizes and declares that the transportation of persons and of property, for commercial purposes, by water within the State or between points within the State, constitutes a business affected with the public interest. It is intended by this chapter to provide for fair and impartial regulation of such transportation, so administered as to recognize and preserve the inherent advantages of such transportation, in the interest of preserving for the public the full benefit and use of the waterways consistent with the public safety and the need of commerce: to promote safe, adequate, economical, and efficient service among carriers, to encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices, all to the end of developing, coordinating, and preserving a sound transportation system by water. This chapter shall be administered and enforced with a view to carrying out the above declaration of policy.

HRS § 271G-2.

HRS § 271G-16 provides in relevant part:

Rates, fares and charges of common carriers by water.

.....
(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.

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.

The commission, in approving the 2001 and 2004 Stipulations that initially established and then subsequently extended the Zone, held:

Upon review of the record, including but not limited to the December 14, 2001 Stipulation, we find that, in general, the agreements, terms and conditions agreed to by the parties are reasonable and in the public interest. We thus conclude that the proposed agreements, terms and conditions set forth in the December 14, 2001 Stipulation should be approved and made part of this order, subject to the following modification and clarification.

Decision and Order No. 19115, at 8 (the 2001 Stipulation).

Upon review of the record and consistent with our findings in Decision and Order No. 19115, we find that, the proposed agreements, terms and conditions agreed to by the Parties as set forth in the December 6, 2004 Stipulation are reasonable and in the public interest. We, thus, conclude that the proposed agreements, terms and conditions set forth in the December 6, 2004 Stipulation should be approved and the December 6, 2004 Stipulation should be adopted and made part of this Order.

Decision and Order No. 21768, at 6 (the 2004 Stipulation).

A.

Review and Findings

In general, the Parties stipulate to: (1) having the New Zone take effect from January 1, 2008; (2) removing the pilot nature of the Zone, and instead, having the New Zone remain in effect until terminated by the request of Young Brothers or the Consumer Advocate, or upon the commission's order; (3) a maximum overall rate increase of 5.5 percent, provided that for any particular customer class or classes, a maximum increase of 7.5 percent is established; (4) a maximum rate decrease of ten percent, provided that any decrease proposed for a given customer class does not result in non-compensatory rates for the customer class; (5) an effective date of no earlier than August 1, 2008, for any rate adjustment sought by Young Brothers in accordance with the New Zone; (6) Young Brothers having the ability to seek rate adjustments in a Zone Filing to be effective no earlier than ten months after the effective date of any decision and order in an immediately preceding Zone Filing; (7) Young Brothers having the ability to seek rate adjustments in a Zone Filing to be effective no earlier than one year after the effective date of any decision and order in an immediately preceding general rate case filing, i.e., the general rate increase followed by a Zone Filing situation; and (8) Young Brothers having the ability to seek rate adjustments under a general rate case to be effective no earlier than

one year after the effective date of a decision and order in an immediately preceding Zone Filing, i.e., the Zone Filing followed by a general rate case filing situation.

Here, based on its review of the commission's records in this docket and other dockets involving Young Brothers' ratemaking practice,²³ the commission finds and concludes as follows:

1. The Zone was in effect for a six-year period, from December 20, 2001 to December 20, 2007, as a pilot program. During this period, Young Brothers sought and the commission approved three rate increases pursuant to the Zone: (A) 3% increase in the carrier's non-containerized commodity rates, effective June 20, 2002; (B) 5.5% across-the-board increase in the carrier's rates, effective July 18, 2005; and (C) 5.5% across-the-board increase in the carrier's rates, effective September 18, 2006. These rate increases, as verified by the commission, were within Young Brothers' then authorized rate of return of 11.06 percent.

2. As noted by the commission in In re Young Bros., Ltd., Docket No. 2006-0396, Young Brothers has benefited from the streamlined nature of the Zone by minimizing the time and expense associated with the filing and processing of general rate increase applications.

²³The commission takes administrative notice of the docket records involving Young Brothers' ratemaking practice, including In re Young Bros., Ltd., Docket No. 2006-0396, the water carrier's most recent general rate case.

3. The Consumer Advocate does not oppose the continuation of the Zone Practice, subject to the changes between the previous Zone and the New Zone, as agreed-upon by the Parties and as reflected in the 2007 Stipulation. Moreover, in the Consumer Advocate's view, "Young Brothers should, through gradual rate rebalancing, achieve compensatory rates for all lines of service."²⁴

4. As part of the Zone Practice, Young Brothers will continue to: (A) comply with HRS § 271G-17(b), which provides in relevant part that no change shall be made in any rate except after 45-days' notice of the proposed rate change is filed and posted; and (B) submit its financial information in support of any request made under the New Zone, based on its most recent cost of service study. The Consumer Advocate, in turn, will continue to review Young Brothers' proposal and recommend the suspension of the proposed rate change if there are any concerns that cannot be resolved within the 45-day review period. Moreover, the commission's authority to reject or deny a Zone Filing remains unaffected under the New Zone.

5. The New Zone, as reflected in the 2007 Stipulation, appears to provide customers with the appropriate safeguards to ensure that any changes in rates authorized by the commission are just and reasonable, and will not result in Young Brothers "over earning," i.e., earning more than its authorized rate of return of 10.76 percent.

²⁴2007 Stipulation, Section II.1.a.iv, at 4.

6. The 2007 Stipulation addresses the Parties' conflicting views, as discussed by the commission in In re Young Brothers, Ltd., Docket No. 2006-0396, as to the effective date of any rate changes resulting from a general rate case, during the period in which the Zone Practice is in effect.

7. In accordance with HRS §§ 271G-2 and 271G-16(e), the continuation of the Zone Practice appears just, reasonable, and consistent with the public interest of: (A) promoting safe, adequate, economical, and efficient water transportation service by Young Brothers, at the lowest cost consistent with the furnishing of the service; (B) providing sufficient revenues to enable Young Brothers, under honest, economical, and efficient management, to provide water transportation service; and (C) "encourag[ing] the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices, all to the end of developing, coordinating, and preserving a sound transportation system by water."

8. Two of the parameters proposed by the Parties appear inconsistent with the public interest: (A) Section II.1.a, which provides that "[f]or any customer class or classes, a maximum increase . . . of 7.5 percent is established[;]" and (B) Section II.6.a, which establishes a minimum time period of ten months for when rate increases (or decreases) can take effect between successive Zone Filings.

In In re Young Brothers, Ltd., Docket No. 2006-0396, the commission authorized the implementation of a fuel price surcharge for Young Brothers, to take effect from December 1, 2007. Effective December 4, 2007, Young Brothers implemented its fuel surcharge (1.29 percent), and effective March 4, 2008, the water carrier increased its fuel surcharge to 2.78 percent.²⁵ Thus, Young Brothers now has the ability to timely offset the costs associated with the increases in the price of fuel by adjusting its fuel surcharge every quarter. Moreover, the proposal that "any customer class or classes" are subject to rate increases above 5.5 percent, and up to 7.5 percent, may lead to disproportionate, annual increases in certain cargo categories, and thus, does not appear just and reasonable under the circumstances.²⁶ The commission agrees that moving toward compensatory prices within classes of service is desirable, but concludes that if such movement cannot be achieved through 5.5 percent adjustments per year (see below) under the New Zone, it is better to review the issue through the more rigorous analysis in a general rate case proceeding.

Finally, the commission rejects as unpersuasive the Parties' rationale in support of the ten-month "Minimum Time Between Successive Zone Practice Filings." As previously noted by the commission in In re Young Bros., Ltd.,

²⁵Notice of Young Brothers Regarding a Fuel Price Adjustment, filed on December 3, 2007; and Notice of Young Brothers Regarding a Fuel Price Adjustment, filed on March 3, 2008.

²⁶See HRS § 271G-16(c) (undue or unreasonable preference or advantage, or unjust discrimination or undue or unreasonable prejudice or disadvantage, is prohibited).

Docket No. 2006-0396, "Young Brothers has benefited from the Zone by minimizing the time and expense associated with the filing and processing of general rate increase applications[,]" including "obtaining a virtually automatic 5.5% across-the-board rate increase under the Zone[.]"²⁷ In the commission's view, Young Brothers will continue to benefit under the New Zone, and as past history suggests, Young Brothers will, in all likelihood, increase, rather than decrease rates, as authorized under the New Zone. The commission, thus, finds that a minimum time interval of one year is reasonable under the circumstances.

Accordingly, consistent with the public interest, the following modifications to the 2007 Stipulation are appropriate: (A) for Section II.1.a, eliminating the provision that "[f]or any customer class or classes, a maximum increase . . . of 7.5 percent is established[;]" and (B) for Section II.6.a, changing the "Minimum Time Between Successive Zone Practice Filings" from ten months to one year.²⁸

9. Based on the above-noted findings and conclusions, rate changes proposed by Young Brothers that fall within the range of the New Zone, as modified herein, are presumptively just and reasonable, which is, however, a rebuttable presumption.²⁹

²⁷ In re Young Bros., Ltd., Docket No. 2006-0396, Order No. 23222, at 32.

²⁸ The commission notes that the one-year minimum time interval between effective dates under successive Zone Filings is consistent with the federal transportation zone of reasonableness. See 49 U.S.C. § 13701(d)(1).

²⁹ Hereinafter, unless the context requires otherwise, the term "New Zone" includes the modifications mandated by the commission.

10. The Zone, which was initially established as a pilot program, expired on December 20, 2007. The commission, pursuant to HRS chapter 271G, establishes the New Zone, which shall take effect from the date of this Decision and Order. Contrary to the Parties' request, the New Zone will not retroactively apply to January 1, 2008. Instead, the New Zone will take effect on a prospective basis, from the date of this Decision and Order.

B.

New Zone Established

The New Zone, as approved by this Decision and Order, will consist of the parameters set forth in Section I.C, Paragraphs No. 1 to No. 6, above, as modified herein by the commission. For clarity purposes and ease of administration, Young Brothers shall file a document that sets forth the parameters of the New Zone, which incorporates the commission's modifications, including the effective date of the New Zone.

While the commission accepts as reasonable the parameters of the Zone, as crafted by the Parties and as modified herein by the commission, the commission makes it clear that it reserves the right, at any time, to: (1) review and adjust the New Zone or its applicable requirements; or (2) terminate the New Zone, upon a finding that said Zone appears to adversely affect the public interest.

Lastly, in the 2004 Stipulation, by which the Parties agreed to extend the previous Zone for an additional three years, from December 20, 2004 to December 20, 2007, the Parties noted:

The Consumer Advocate and Young Brothers agreed that the zone of reasonableness concept deserves further consideration. By extending the program for an additional three years, both parties will have more time to assess the impact on ratepayers before agreeing to continue the program on a permanent basis. Further, the Consumer Advocate contends that the additional three years will allow the parties an opportunity to determine the impact of the Superferry's proposed operations on YB's operations since the [Superferry] is expected to have two ferries in commercial operation during the last year of the three-year extension period.

2004 Stipulation, Section III, Continuation of the Zone of Reasonableness Practice, at 5 (emphasis added) (quoted in In re Young Bros., Ltd., Docket No. 01-0255, Decision and Order No. 21768, at 5-6).

Here, the commission takes official notice that the Hawaii Superferry, Inc., which commenced operations in late 2007, presently has one vessel in service, which is used for a daily round trip between the islands of Oahu and Maui. The second vessel, which is currently under construction, is not scheduled to commence service between the islands of Oahu and Hawaii until 2009.³⁰ Consistent with the Consumer Advocate's contention, as set forth in the 2004 Stipulation, the Parties shall prepare and file a report with the commission by December 31, 2010, which discusses the impact of Hawaii Superferry, Inc.'s operations on Young Brothers' operations.

³⁰See In re Hawaii Superferry, Inc., Docket No. 04-0180.

III.

Orders

THE COMMISSION ORDERS:

1. The Parties' 2007 Stipulation, filed on December 19, 2007, is approved, as modified herein by the commission.

2. The New Zone, pursuant to the parameters referenced in Section II.C, above, as modified herein by the commission, shall take effect from the date of this Decision and Order.

3. By April 23, 2008, Young Brothers shall file a document that sets forth the parameters of the New Zone, which incorporates the commission's modifications, including the effective date of the New Zone.

4. Young Brothers shall file a cost of service study under protective order by June 30 of each year that the New Zone remains in effect, to reflect the prior year's results. The study shall include a breakdown between regulated and non-regulated revenues, expenses, and plant investment, and shall enable the Parties to determine the contribution margin of each of the then existing lines of service, based on current operations that are normalized for rate setting purposes.

5. The Parties shall prepare and file a report with the commission by December 31, 2010, which discusses the impact of Hawaii Superferry, Inc.'s operations on Young Brothers' operations.

6. The commission reserves the right, at any time, to: (A) review and adjust the New Zone or its applicable requirements; or (B) terminate the New Zone, upon a finding that said Zone appears to adversely affect the public interest.

DONE at Honolulu, Hawaii APR - 9 2008.

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

01-0255.laa

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 24139 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: APR - 9 2008