

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 and Certain Tariff)
 Changes.)
 _____)

DOCKET NO. 2008-0266

ORDER SUSPENDING APPLICATION

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DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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In the Matter of the Application of))	
YOUNG BROTHERS, LIMITED)	Docket No. 2008-0266
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For Approval of a General Rate)	
Increase and Certain Tariff)	
Changes.)	
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ORDER SUSPENDING APPLICATION

By this Order, the commission suspends the application for approval of a general rate increase and certain tariff changes filed by YOUNG BROTHERS, LIMITED ("YB" or "Young Brothers"),¹ and opens an investigation to examine the merits of the water carrier's Application.² The deadline for interested persons to file motions to intervene or participate in this proceeding is twenty days from the date of this Order, in accordance with HAR § 6-61-57(3)(B).

¹The 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).

²Application; Verification; Certificate of Service; Exhibits; Direct Testimonies and Testimony Exhibits; and Work Papers, filed on December 19, 2008, including certain documents filed under confidential seal, and Amended Certificate of Service, filed on December 23, 2008 (collectively, "Application"). Young Brothers served copies of its Application upon the Consumer Advocate and the mayors of each county that will be affected by the water carrier's proposed increase in rates.

The commission will accept written comments from the general public on Young Brothers' Application, subject to the guidelines noted in this Order. Young Brothers, as part of its community outreach/relations process, shall advise its shippers of the opportunity to submit written comments to the commission on Young Brothers' Application.

Lastly, the Parties are instructed to submit a stipulated prehearing order for the commission's review and consideration.

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. 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 ("Tariff 5-A").

On October 16, 2008, Young Brothers filed a Notice of Intent ("Notice") with the commission, stating its intent to file an application for a general rate increase no less than two months from the date of the filing of said Notice. On October 28, 2008, the commission issued its Order Setting Forth Certain Pre-Application Instructions to Young Brothers, Limited.

On December 19, 2008, Young Brothers filed its application for approval of a general rate increase and certain

tariff changes. In particular, Young Brothers seeks the commission's approval to increase its revenues by \$10,458,000, i.e., approximately 17.91 percent over revenues at present rates, based on the 2009 calendar test year and a proposed rate of return of 11.20 percent on the water carrier's average depreciated rate base (for its intrastate water carrier operations). For the specific cargo types, Young Brothers proposes rate increases ranging from fifteen to twenty-five percent, as follows:³

Automobiles and roll-on/roll-off cargo	10%
Containers (including flatracks and platforms)	15%
Less than container load ("LCL") cargo	25%

In addition, consistent with the proposed increases in its respective container and LCL rates, Young Brothers seeks to raise: (1) the minimum charge for platforms by fifteen percent; and (2) the minimum billing of lading by twenty-five percent.

³Concomitantly, "Young Brothers anticipates working with [its] Molokai and Lanai customers to discuss a possible lesser increase in rates for Molokai and Lanai LCL cargo than proposed in [the water carrier's] rate design with [its] customers who are farmers to discuss the possibility of a higher Island Agricultural Product discount. [Young Brothers] anticipate[s] working with the Consumer Advocate on these and any similar issues that may arise." Application, at 48.

As part of its Application, Young Brothers also proposes certain other changes to its Tariff 5-A.⁴ The revisions to Tariff 5-A proposed by Young Brothers to effectuate the changes set forth in its Application are set forth in its Exhibit YB-Ex-1.

Young Brothers filed its Application pursuant to HRS §§ 271G-16 and 271G-17, HAR § 6-61-94, and HAR chapter 6-65. Young Brothers requests that the commission "[a]pprove such rates as will allow YB to earn a fair rate of return on its investments to go into effect without suspension in 45 days, on February 2, 2009."⁵ In the alternative, Young Brothers states that:

. . . if a suspension and investigation of this tariff change is ordered and [YB] is required to go to evidentiary hearing, (a) allow Young Brothers to update the supporting financial statements to reflect actual year-to-date results for Test Year 2009 and to base its rate increase on the revised projections and (b) grant the level of increase, as established in the evidentiary hearings, in order to provide Young Brothers with an opportunity to earn a fair return on its investment.

⁴As described by Young Brothers:

The major changes include (1) deletion of commodity codes, which really are used for internal data processing purposes only; (2) increase in detention and storage charges for G-vans for deterrence purposes; (3) increasing the automobile length limitation from 17 feet to 20 feet in response to customer feedback; (4) conforming the rates for the islands of Molokai and Lanai to the rate for the island of Maui (i.e., all islands comprising the County of Maui), with respect to canoes and hazardous [roll-on/roll-off] cargo.

Application, at 11.

⁵Application, at 49.

Application, at 49; see also id. at 34 (as Young Brothers compiles its November and December 2008 financial data, it will submit updated exhibits to the commission and the Consumer Advocate).

The deadline for interested persons to file timely protests expired on January 20, 2009, pursuant to HAR §§ 6-61-58, 6-61-60, and 6-65-38. No protests were filed with the commission.

II.

Discussion

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);⁶ see also 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).

HAR § 6-65-40, governing the suspension and investigation of tariff changes proposed by a water carrier, provides in relevant part:

(a) Upon the filing of a tariff or tariff change, the commission may:

- (1) Allow the tariff or tariff change, or any portion thereof, to take effect forty-five days after publication, filing, and posting of the proposed tariff or tariff change have all been

⁶In addition, HRS § 271G-23(a) provides:

Hearings. (a) All hearings, investigations, and proceedings shall be governed by chapter 91 and by rules of practice and procedure adopted by the public utilities commission, and in the conduct thereof, the technical rules of evidence need not be applied; provided that in all evidentiary hearings conducted pursuant to chapter 91 in which a carrier has the burden of justifying the reasonableness of its rates, fares, charges, or classifications, the burden of proof of the carrier in proving the reasonableness of expenditures, contracts, leases, or other transactions between the carrier and corporate affiliates of the carrier shall be satisfied only if the reliable, probative and substantial evidence is clear and convincing. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission.

HRS § 271G-23(a) (boldface in original).

completed, in accordance with this chapter; or

- (2) Suspend the operation of the tariff or tariff change, or any portion thereof, for investigation. The commission may schedule and conduct a hearing to aid in its investigation of the justness and reasonableness of the proposed tariff or tariff change.

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(c) A tariff suspension ordered by the commission may not exceed six months from the date of the issuance of the commission's order suspending the operation of the tariff. The tariff or tariff change will take effect, if the commission fails to issue a final order within the six-month period.

HAR § 6-65-40.

HAR § 6-61-57(B) provides that a motion to intervene or participate, to be timely, shall be filed and served upon all parties and the Consumer Advocate "[t]wenty days after the commission orders an investigation including an investigation of a tariff change[.]"

As Young Brothers' Application merits further review and scrutiny by the commission and the Consumer Advocate, the commission, consistent with HRS § 271G-17(d) and HAR § 6-65-40, will: (1) suspend Young Brothers' Application for a maximum period of up to six months from the date of this Order; and (2) open this investigative proceeding to examine the merits of Young Brothers' Application. The deadline for interested persons to file motions to intervene or participate in this proceeding is twenty days from the date of this Order, in accordance with HAR § 6-61-57(3)(B). In addition, the commission does not intend to schedule or hold any public hearings on Young Brothers'

Application.⁷ Instead, the commission will accept written comments from the general public on Young Brothers' Application, subject to the following guidelines:

- Written comments may be submitted to the commission by postal or electronic mail, addressed as follows:

Postal Mail

Public Utilities Commission
465 South King Street #103
Honolulu, HI 96813

OR

Electronic Mail

Hawaii.PUC@hawaii.gov

- Written comments should reference Docket No. 2008-0266, and include the writer's name and the entity or organization the writer represents, if any.

Young Brothers, as part of its community outreach/relations process, shall advise its shippers of the opportunity to submit written comments to the commission on Young Brothers' Application.

⁷Public hearings on Young Brothers' Application are not required by the Hawaii Water Carrier Act, HRS chapter 271G. Instead, such public hearings, if any, are subject to the commission's discretion. In In re Young Bros., Ltd., Docket No. 2006-0396, Young Brothers' most recent rate case proceeding, the commission held statewide public hearings on the islands of Oahu, Hawaii (Hilo and Kailua-Kona), Kauai, Maui, Molokai, and Lanai. While members of the general public appeared and testified at the County of Maui public hearings, no one from the public testified at the Oahu, Hawaii (Hilo and Kailua-Kona), or Kauai public hearings. On balance, the commission finds that based on its recent experience, the holding of statewide public hearings on Young Brothers' Application is not cost effective given the commission's limited resources. Cf. HAR § 6-61-1 (secure the just, speedy, and inexpensive determination of each commission proceeding). Instead, consistent with past water carrier rate cases, the commission will accept written comments from the public on Young Brothers' Application.

III.

Orders

THE COMMISSION ORDERS:

1. Young Brothers' Application, filed on December 19, 2008, is suspended for a maximum period of up to six months from the date of this Order, and an investigation is instituted to examine the merits of Young Brothers' Application.

2. The deadline for interested persons to file motions to intervene or participate in this proceeding is twenty days from the date of this Order, in accordance with HAR § 6-61-57(3)(B).

3. Written comments from the general public on Young Brothers' Application will be accepted by the commission, subject to the following guidelines:

- Written comments may be submitted to the commission by postal or electronic mail, addressed as follows:

Postal Mail

Public Utilities Commission
465 South King Street #103
Honolulu, HI 96813

OR

Electronic Mail

Hawaii.PUC@hawaii.gov

- Written comments should reference Docket No. 2008-0266, and include the writer's name and the entity or organization the writer represents, if any.

Young Brothers, as part of its community outreach/relations process, shall advise its shippers of the

opportunity to submit written comments to the commission on Young Brothers' Application.

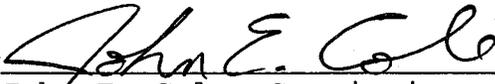
4. The Parties shall submit a stipulated procedural order, incorporating their agreed-upon issues, schedule, and procedures with respect to this proceeding, for the commission's review and consideration. If no motions to intervene or participate are filed, the stipulated procedural order shall be due within seven days following the deadline to file any such motions to intervene or participate. Conversely, if one or more motions to intervene or participate are filed, the Parties and any designated intervenors or participants, if any, shall file their stipulated procedural order within ten days from the filing of the commission's decision on the motions to intervene or participate. If no agreement is reached on a stipulated procedural order, each party, and if applicable, intervenor and participant, shall submit its own proposed procedural order.

5. Young Brothers shall promptly update its Application to include its updated financial data.

DONE at Honolulu, Hawaii JAN 29 2009.

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

2008-0266.cp

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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