

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
 )  
 YOUNG BROTHERS, LIMITED )  
 )  
 For Approval to Amend its Sailing )  
 Schedules for Kahului Harbor on )  
 the Island of Maui, Kaunakakai )  
 Harbor on the Island of Molokai, )  
 and Kaunalapau Harbor on the Island )  
 of Lanai in Local Freight Tariff )  
 No. 5-A. Transmittal No. 09-0001. )  
 )

DOCKET NO. 2009-0062

ORDER SUSPENDING APPLICATION

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

PUBLIC UTILITIES  
COMMISSION

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schedule and hold public meetings on the islands of Molokai, Oahu, Maui, and Lanai for the purpose of providing interested persons with the opportunity to appear and comment on Young Brothers' Application. Lastly, the Parties are instructed to submit a stipulated procedural 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").

Young Brothers, as the result of placing into service new, larger barges as part of its overall ten-year strategic plan, proposes certain changes to its sailing schedules for Kahului Harbor on the island of Maui, Kaunakakai Harbor on the island of Molokai, and Kaumalapau Harbor on the island of Lanai.<sup>3</sup> The net effect of the proposed changes to Young Brothers' sailing schedules, if implemented by the water carrier, will eliminate the direct weekly sailing from Maui to Molokai, and add a weekly sailing to Molokai via Lanai. With the proposed elimination of the direct weekly sailing from Maui to Molokai, Young Brothers

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<sup>3</sup>A summary of Young Brothers' proposed changes to its sailing schedule is set forth in Table 1 of its Application.

suggests that the most efficient route for the shipment of commodities from Maui to Molokai will be from Maui to Honolulu to Molokai. Shippers that utilize this route will incur: (1) a transshipment fee in Honolulu Harbor from Young Brothers, which the water carrier proposes to waive for a limited period; and (2) additional wharfage fees in Honolulu Harbor from the State of Hawaii ("State"), Department of Transportation.

Young Brothers contends that the proposed changes to its sailing schedules, if implemented, will result in cost savings of nearly \$1 million annually. In this regard, Young Brothers notes that "[i]n the six-month period of January 2009 to June 2009, \$490,000 is budgeted for major line items associated with the current Honolulu to Maui to Molokai barge sailing and reflected in the 2009 test year of Young Brothers' pending rate case (Docket No. 2008-0266)."<sup>4</sup>

Young Brothers filed its Application pursuant to HRS § 271G-17, HAR § 6-61-94, and HAR 6-5-30, and seeks to implement its proposed changes to its sailing schedules, effective April 1, 2009.<sup>5</sup>

Comments expressing concerns with or opposing the changes to the sailing schedules proposed by Young Brothers were submitted by Thompson Ranch, Diamond B Ranch, the Molokai Chamber of Commerce, the Hawaii Cattlemen's Council, Inc. (including the Maui Cattlemen's Association), and two members from the Maui

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<sup>4</sup>Application, at 24.

<sup>5</sup>See Commission's letter, dated February 19, 2009 (treating Young Brothers' transmittal as a forty-five day notice filing, and not as a filing seeking approval on short notice).

County Council.<sup>6</sup> The concerns expressed to date appear to focus on Young Brothers' proposal to eliminate the direct weekly sailing from Maui to Molokai, which will purportedly result in increased shipping costs to the shipper and the delay in shipping cargo from Maui to Molokai, via Honolulu. Comments that affirmatively support Young Brothers' proposed changes to its sailing schedules were submitted by Friendly Market Center and Kualapuu Market Ltd./Molokai Wines 'n Spirits Unlimited.<sup>7</sup>

By letter dated March 16, 2009, the Consumer Advocate states that Young Brothers has provided the Consumer Advocate with additional information in support of the proposed tariff changes in response to information questions posed by the Consumer Advocate. Nonetheless, the Consumer Advocate states that additional time is needed to adequately conduct additional discovery and to consider the comments submitted by the public. Accordingly, the Consumer Advocate requests an extension of time until April 6, 2009, to submit its position statement.

On March 16, 2009, Young Brothers submitted to the commission copies of its responses to the Consumer Advocate's informal questions. According to Young Brothers, its informal responses:

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<sup>6</sup>See, e.g., Commission's letters, dated March 2, 5, 9, and 16, 2009, with enclosures; and the Hawaii Cattlemen's Council, Inc.'s electronic mail, dated March 16, 2009. The Molokai Chamber of Commerce subsequently informed the commission that it no longer seeks the suspension or postponement of Young Brothers' transmittal. See Molokai Chamber of Commerce's electronic mail, dated March 13, 2009.

<sup>7</sup>See, e.g., Commission's letter, dated March 16, 2009, with enclosures; and the Hawaii Cattlemen's Council, Inc.'s electronic mail, dated March 16, 2009.

. . . . demonstrate that (A) the Molokai community will not be adversely affected and, in fact, will benefit by the sailing schedule change described in the Application (which includes the elimination of the "Maui Special/Molokai Stopover" described below), (B) the Molokai Chamber of Commerce, expressly joined by two grocery stores on Molokai, supports the Application, (C) YB has addressed all concerns stated by Maui ranchers who have transported cattle or have plans to transport cattle to Molokai, providing each with a feasible and affordable alternative to the direct Maui to Molokai sailing, and (D) it is in the public interest and in the interest of the health of the carrier that this Application be approved without delay.

. . . .

. . . . These changes are an essential element of YB's plan to (1) lessen needed [less than container load ("LCL")] rate increases for Molokai and Lanai (as described above), (2) increase the [Island Agricultural Product] discount for containerized agriculture (as described in YB's Application for a General Rate Increase, filed December 19, 2008, in Docket No. 2008-0266) and (3) decrease the over-all average increase for all ratepayers. Moreover, the change of tug and barge assignments allows YB to (4) assign a barge with a house, the *Kamaluhia*, to YB's barge sailings to Molokai and Lanai, a change beneficial to these LCL-dependent communities, (5) provide Molokai with better spacing between barge days (under the proposed schedule, Molokai barge days would be Monday and Thursday rather than the current Wednesday and Thursday), a change desired by many Molokai retailers and (6) have [an] efficient use of its assets, making, for example, maintaining two barge sailings to Molokai more affordable.

Young Brothers' responses, dated March 16, 2009, at 1 and 11.

## 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); 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 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.

. . . . .

(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[.]"

Young Brothers, in its responses dated March 16, 2009, describes its efforts in addressing the concerns raised as a result of its proposed changes to its sailing schedules, and reiterates its request to approve its Application, without delay.

Conversely, the Consumer Advocate is unable to state its position on the merits at this time, and instead, needs additional time to complete its review. The commission, at this juncture, is also not convinced that the concerns identified to date have been sufficiently addressed by the water carrier,<sup>8</sup> or that the Application is just, reasonable, and consistent with the public interest.

Accordingly, 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).

Lastly, the commission intends to schedule and hold public meetings on the islands of Molokai, Oahu, Maui, and Lanai for the purpose of providing interested persons with the opportunity to appear and comment on Young Brothers' Application. The Parties will be notified of the dates, times, and locations of the public meetings.

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<sup>8</sup>See, e.g., Hawaii Cattlemen's Council, Inc.'s electronic mail, dated March 16, 2009; and County of Maui Councilmember Jo Anne, Johnson, dated March 15, 2009.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. Young Brothers' Application, filed on February 13, 2009, 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. The Parties shall submit a stipulated procedural order, incorporating their agreed-upon issues, schedule, and procedures with respect to this proceeding (including the date for the filing of the Consumer Advocate's position statement), for the commission's review and consideration. If no timely 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 timely motions to intervene or participate are filed, the Parties and any designated intervenors or participants, if any, shall file their stipulated procedural order within seven 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.

4. Following notification from the commission, Young Brothers shall, up to the date of the applicable public meetings, advise its shippers of the dates, times, and locations of the applicable public meetings for the purpose of providing interested persons with the opportunity to appear and comment on Young Brothers' Application.

DONE at Honolulu, Hawaii MAR 17 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

YB Transmittal No. 09-0001,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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