

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 Kaumalapau Harbor on the Island)
of Lanai in Local Freight Tariff)
No. 5-A. Transmittal No. 09-0001.)
_____)

DOCKET NO. 2009-0062

ORDER REGARDING REVISED
TARIFF SHEETS AND FURTHER COMMISSION REVIEW

RECEIVED

2009 MAY -7 A 9:19

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

PUBLIC UTILITIES
COMMISSION

2009 MAY -6 P 2:33

FILED

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 Kaumalapau Harbor on the Island)
 of Lanai in Local Freight Tariff)
 No. 5-A. Transmittal No. 09-0001.)
)

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).

by Young Brothers and the Consumer Advocate, and subject to certain conditions. Ordering Paragraph No. 3 of the commission's Decision and Order provides:

By April 30, 2009, Young Brothers shall file its revised tariff sheets for Tariff 5-A, with the applicable issued and effective dates, which: (A) implement the changes in the County of Maui sailing schedules approved by the commission, including the mitigation measures set forth in Exhibit A of the Settlement Stipulation; and (B) include the provisions that reflect the waiver of the transshipment fees for a one-year period, from May 1, 2009 to April 30, 2010, for commodities originating from Kahului Harbor and destined for Kaunakakai Harbor.

Decision and Order, Ordering Paragraph No. 3, at 33-34.

The net effect of the commission's recently approved changes to Young Brothers' County of Maui sailing schedules include the elimination of the weekly direct sailing from Maui to Molokai, designated as the Maui Special/Molokai Stopover sailing by Young Brothers. The changes to the County of Maui sailing schedules took effect on May 1, 2009, as requested by Young Brothers.

On April 30, 2009, Young Brothers filed its revised tariff sheets, in response to Ordering Paragraph No. 3.

II.

Discussion

A.

Revised Tariff Sheets

Young Brothers' revised tariff sheets do not include the mitigation measures approved by the commission, as set forth

in the Parties' Exhibit A. Instead, Young Brothers' revised tariff sheets include the following notation:

NOTE:

Pursuant to Decision and Order filed April 27, 2009, this sailing schedule is subject to the mitigation measures set forth in Exhibit A of the Stipulation on Settlement of all Issues in this Proceeding of Young Brothers, Limited and the Division of Consumer Advocacy filed April 20, 2009.

Young Brothers' sixth revised page no. 4 and no. 5, filed on April 30, 2009.

HRS § 271G-17(a) states in part that "[e]very 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."² Young Brothers shall re-file its revised tariff sheets to incorporate the mitigation measures approved by the commission in its Decision and Order.

B.

Newly Disclosed Information

HAR §§ 6-61-13 and 6-61-17 state:

Code of ethics. (a) Any person who signs a pleading, brief, or document, enters an appearance at a hearing, or transacts business with the commission, by that act represents the following:

- (1) That the person is lawfully authorized and qualified to so act;

²See also HAR § 6-65-20 (publication of sailing schedules).

- (2) That the person will comply with the laws of this State and the several counties, and the rules of this commission; and
- (3) That the person will maintain the respect due to the commission and will not deceive or knowingly present any false statements of fact or law to the commission.

(b) The commission may at any time require any person appearing before the commission in a representative capacity to furnish proof of authorization and qualification to act in that capacity.

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Verification. Applications, complaints, and other pleadings that initiate a proceeding and amendments to any such application, complaint, or other pleading shall be verified by at least one applicant or complainant. Answers, if any, shall be verified by at least one of the respondents filing the same. Pleadings may be verified:

- (1) By an officer, if the party filing the pleading is a corporation or association;
- (2) By the attorney for a party, if that party is absent or for some cause is unable to sign and verify that pleading.

HAR §§ 6-61-13 and 6-61-17.

It is clear from Young Brothers' filings and actions that the water carrier sought the commission's expeditious approval of its proposed changes to its County of Maui sailing schedules. Initially, Young Brothers, as part of its Application, requested the commission's approval by March 16, 2009,³ and following the commission's suspension of

³See Young Brothers' Application, filed on February 13, 2009 ("Application"), at 1-2 (commission approval by March 16, 2009, or sooner, in order to place the tariff changes into effect on April 1, 2009, with sufficient time to inform Young Brothers'

the water carrier's request and the holding of public meetings on the islands of Oahu, Molokai, Maui, and Lanai, Young Brothers requested the commission's approval by April 27, 2009 in the event that a settlement agreement or Young Brothers' reply position statement was filed with the commission by April 20, 2009.⁴

Young Brothers, from the outset, contended that an underlying reason in support of its proposal to change its County of Maui sailing schedules was the approximate \$1 million in cost savings it sought to achieve with the implementation of its new sailing schedules. In this regard, Young Brothers represented:

E. Cost Savings Associated with Sailing Schedule Change.

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One of the most critical, and most achievable, cost-savings measures that YB seeks to accomplish in 2009 is the sailing schedule changes proposed in this Application. In 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). If the requested sailing schedule changes are approved by the Commission, Young Brothers will highlight in Docket No. 2008-0266 the specific portions of filed exhibits that include costs associated with this sailing and amend its revenue requirement in its 2009 test year to

customers about the commission's decision); and Commission's letter, dated February 19, 2009 (Young Brothers' filing will be treated by the commission as a forty-five day notice filing, and not as a filing seeking approval on short notice).

⁴See Exhibit A of the Parties' proposed Stipulated Procedural Order, submitted on April 15, 2009.

reflect the associated savings. Although Young Brothers' 2009 test year in its pending rate case (Docket No. 2008-0266) includes only six months of expenses relating to the Honolulu to Maui to Molokai barge sailing, on an annualized basis, the requested sailing schedule changes would result in savings of nearly \$1.0 million annually. Given current economic conditions, which have declined even in the time since Young Brothers' rate filing in Docket No. 2008-0266, Young Brothers is very much in need of achieving these cost savings.

Young Brothers' Application, at 24-25 (boldface and underscore in original).⁵

B.2. Stipulation. [Young Brothers] and the Consumer Advocate agree that elimination of the Maui special sailing and deployment of only the larger new-built barges to service Kahului Harbor will result in costs savings of nearly \$1 million annually and will have a direct benefit to its Molokai and Lanai customers.

Support. The costs associated with the sailing to Kahului Harbor that [Young Brothers] proposes to eliminate are set forth in **Exhibit C** attached to this Settlement Stipulation. Deployment of [Young Brothers'] new, larger barges will permit early retirement of outdated barges and tugs, allowing [Young Brothers] to avoid expensive drydocking and other scheduled maintenance that would not add incrementally and proportionately to the service lives of these aging vessels. See **Exhibit C** for a delineation of these cost savings.

Moreover, if the proposed sailing changes are approved by the Commission, one of the beneficiaries of these cost savings will be [Young Brothers'] Molokai and Lanai customers, for whom [Young Brothers] will propose and support a

⁵Young Brothers' Application was signed and verified by its vice president of strategic planning and government affairs. His verification states in pertinent part that "he has read the foregoing and knows the contents thereof; the same are true to his knowledge except as to matters stated on information or belief; as to those matters, he believes them to be true; and he is authorized by Young Brothers, Limited to verify that the contents thereof are true."

reduction of the 25 percent rate increase in [less than container load ("LCL")] cargo shipments to 12 percent in [Young Brothers'] general rate increase filing in Docket No. 2008-0266. Application at YB-Ex-4 (Presentations at Informational Briefings).

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C.2. Stipulation. [Young Brothers] and the Consumer Advocate agree that the cost savings resulting from the proposed elimination of the Maui special sailing and deployment of only the larger new-built barges to service Kahului Harbor will have a direct benefit to [Young Brothers'] Molokai and Lanai customers.

Support. The resulting cost savings will contribute to lowering [Young Brothers'] revenue requirements in its current general rate increase filing (see generally Docket No. 2008-0266), including lowering the requested increase in [LCL] rates for shipments to Molokai and Lanai. See **Exhibit C** attached to this Settlement Stipulation for computation of the resulting cost savings. See also *supra* discussion at **B.2**.

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D.2. Stipulation. [Young Brothers] and the Consumer Advocate agree that the cost savings resulting from the proposed elimination of the Maui-to-Molokai direct sailing and combining the once weekly Lanai sailing with one of the two weekly Molokai sailings will have a direct benefit to [Young Brothers'] Molokai and Lanai customers.

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Support. The resulting cost savings will contribute to lowering [Young Brothers'] revenue requirements in its current general rate increase filing (see generally Docket No. 2008-0266), including lowering the requested increase in LCL rates for shipments to Molokai and Lanai. See **Exhibit C** attached to this Settlement Stipulation for computation of the resulting cost savings. See also *supra* discussion at **B.2**.

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YOUNG BROTHERS, LTD.
Tug Operations - Kahului Sailing Schedule Changed
2009 Test Year

	<u>Net Tug Savings</u>	<u>Barge Makahani</u>	<u>Total Tug & Barge</u>
.			
Total Operating Costs	(521,659)	(288,843)	(810,502)

Stipulation on Settlement of All Issues in this Proceeding ("Stipulation"), at 17-18, 24-25, and 27-28 (boldface and underscore in original); and Exhibit C at 1 (boldface in original).⁶

On April 27, 2009, at 2:45 p.m., the commission, by its Decision and Order, approved the changes to Young Brothers' County of Maui sailing schedules, as agreed-upon by the Parties subject to certain conditions. In approving these changes, the commission relied on Young Brothers' representations that the proposed changes, if implemented, will result in cost savings of "nearly \$1 million annually[;]" specifically, cost savings estimated at \$810,502 in total tug and barge savings for the 2009 test year; thereby providing a "direct benefit" to Young Brothers' Molokai and Lanai customers.

⁶The Stipulation was signed by its vice president of strategic planning and government affairs on Young Brothers' behalf.

On April 27, 2009, at 4:13 p.m., Young Brothers, in its pending 2009 test year rate case, filed its responses to the Consumer Advocate's informal information requests. Young Brothers, in its response to CA-IIR-25, disclosed **for the first time** to the commission the following material information:

CA-IIR-25 Is the \$810,502 reduction in total operating costs all intrastate? If not, please provide calculations in Excel showing the intrastate amounts.

RESPONSE: Prepared by . . . Manager of Regulatory Affairs[.]

Only \$425,241 of the \$810,502 reduction in operating costs will be allocated to intrastate operations. Please see attached Excel file set forth on page 2 of this response.

**YB Response to
CA-IIR-25
Page 2 of 2**

**YOUNG BROTHERS, LTD.
Tug Operations - Kahului Sailing Schedule Changed
2009 Test Year**

	<u>Net Tug Savings</u>	<u>Barge Makahani</u>	<u>Total Tug & Barge</u>
.			
Total Operating Costs	(521,659)	(288,843)	(810,502)
	<u>Intrastate</u>	<u>Interstate</u>	
	(425,241)	(385,261)	

In re Young Bros., Ltd., Docket No. 2008-0266 ("Docket No. 2008-0266"), Young Brothers' response to CA-IIR-25, with attachment (boldface and underscore in original).

The commission seriously questions Young Brothers' failure to fully and clearly disclose, at any time in Docket No. 2009-0062, this material information regarding the estimated allocation of approximately \$425,241 in intrastate cost savings for the water carrier. Young Brothers' pertinent representations in Docket No. 2009-0062, which were made in-person, directly to the commission and the public as part of the public meetings process and in documents filed with the commission, were taken at "face value" by the commission and relied upon by the commission in rendering its decision concerning Young Brothers' request to change its County of Maui sailing schedules. Specifically, the commission was led to believe by Young Brothers that the estimated cost savings from the changes to the County of Maui sailing schedules would be nearly \$1 million annually or \$810,502 for the 2009 test year, which in turn would directly benefit the water carrier's Lanai and Molokai customers as part of Young Brothers' intrastate operations. In other words, the identified cost savings was for Young Brothers' intrastate operations only.

Given the significance of Young Brothers' apparent misleading representations to the commission, including Young Brothers' failure to fully and clearly disclose, at any time during this proceeding, the estimated allocation of approximately \$425,241 in intrastate cost savings for the water carrier, the commission instructs Young Brothers to file one or more written affidavits (including from its vice president of strategic planning and government affairs) that respond to

the commission's stated concerns, including an explanation as to why the cost allocation information disclosed in Docket No. 2008-0266 was never fully and clearly disclosed by Young Brothers to the commission at any time in Docket No. 2009-0062. Upon the commission's receipt of Young Brothers' filing, the recently approved changes to the water carrier's County of Maui sailing schedules will be further reviewed by the commission.

III.

Orders

THE COMMISSION ORDERS:

1. By May 15, 2009, Young Brothers shall re-file its revised tariff sheets to incorporate the mitigation measures approved by the commission in its Decision and Order, filed on April 27, 2009.

2. By May 18, 2009, Young Brothers shall file one or more written affidavits (including from its vice president of strategic planning and government affairs) that respond to the concerns described by the commission in Section II.B (Newly Disclosed Information) of this Order, including an explanation as to why the cost allocation information disclosed in Docket No. 2008-0266 was never fully and clearly disclosed by Young Brothers to the commission at any time in Docket No. 2009-0062.


3. Upon the commission's receipt of Young Brothers' filing identified in Ordering Paragraph No. 2, above, the recently approved changes to the water carrier's County of Maui sailing schedules will be further reviewed by the commission.

DONE at Honolulu, Hawaii MAY - 6 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

2009-0062.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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