

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
YOUNG BROTHERS, LIMITED)
)
For Approval of Tariff Change To)
Eliminate Less Than Container Load)
Service to and from Kahului Harbor)
on the Island of Maui)
_____)

Docket No. 2006-0120

STIPULATION FOR PREHEARING ORDER NO. 22582

Filed June 29, 2006

At 2 o'clock P.M.

Karen H. Groot
Chief Clerk of the Commission

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

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BEFORE THE PUBLIC UTILITIES COMMISSION
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In the Matter of the Application of)	
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YOUNG BROTHERS, LIMITED)	Docket No. 2006-0120
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STIPULATION FOR PREHEARING ORDER

Young Brothers, Limited ("**YB**" or "**Young Brothers**") and the Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs (the "**CA**" or "**Consumer Advocate**") (YB and CA are hereafter collectively referred to as "**Parties**") and the Hawaii Transportation Association ("**HTA**"), the Western Motor Tariff Bureau, Inc. ("**WMTB**"), and the Hawaii Farm Bureau Federation ("**HFBF**") (HTA, WMTB, and HFBF are hereafter collectively referred to as "**Participants**"), submit this Stipulation for Prehearing Order (this "**Stipulation**") to the Honorable Public Utilities Commission of the State of Hawaii (the "**PUC**" or "**Commission**"). This Stipulation is made as directed by Order No. 22463, filed on May 11, 2006, PUC letter dated May 17, 2006,¹ and Order No. 22549, filed on June 21, 2006 (approving HFBF's motion to participate), with respect to the Application For Approval Of Tariff Change To Eliminate Less

¹ By Order No. 22463 filed in Docket No. 2006-0120 on May 11, 2006, the Commission suspended, and instituted an investigation to examine the merits of, Transmittal No. 06-0001. The Commission named HTA and WMTB as participants in this proceeding "to provide information that will assist the commission in its investigation of Transmittal No. 06-0001, and in developing a sound record." Order No. 22463 at 13. The Commission also set forth its intention to schedule the following: (1) June 2006 public hearings on the island of Hawaii (Hilo and Kailua-Kona); (2) July 2006 public hearings on the islands of Kauai, Lanai, Maui, Molokai, and Oahu; and (3) September 21-22, 25-26, 2006, evidentiary hearing. By letter dated May 17, 2006, the Commission further set forth its intended June and July 2006 public hearing and July 2006 evidentiary hearing dates.

Than Container Load Service To And From Kahului Harbor On The Island Of Maui (the "**Application**") filed by Young Brothers on April 13, 2006, as Transmittal No. 06-0001.

Young Brothers, the Consumer Advocate, and Participants hereby stipulate to the following provisions of this Stipulation for Prehearing Order as mutually acceptable to each.

I. STATEMENT OF THE ISSUES

The issue in this proceeding is whether Young Brothers' proposed tariff change, to eliminate less than container load service to and from Kahului Harbor on the island of Maui, is just and reasonable. The issue includes, but is not limited to the following sub-issues:

1. Whether the proposed tariff change subjects any particular person, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage.
2. Whether the proposed tariff change supports the need, in the public interest, for adequate and efficient transportation service.
3. Whether the proposed tariff change enables Young Brothers, under honest, economical, and efficient management, to provide transportation services.

II. SCHEDULE OF PROCEEDINGS

Parties and Participants shall adhere to the schedule of proceedings set forth in Stipulated Regulatory Schedule attached to this Stipulation as Exhibit "A" ("**Stipulated Regulatory Schedule**"). Notwithstanding the above, Parties and Participants shall have the right to amend the Stipulated Regulatory Schedule as may be agreed in writing from time to time.

**III.
MISCELLANEOUS MATTERS TO FACILITATE
AND EXPEDITE THE ORDERLY CONDUCT OF
THESE PROCEEDINGS**

A Party to this proceeding may submit information requests to another party within the time schedule specified in this Stipulated Prehearing Order. To the extent practical, Parties will cooperate by resolving questions regarding information requests and responses informally to attempt to work out problems with respect to understanding the scope or meaning of information requests, or with respect to the availability of information. If a Party is unable to provide the information requested within the prescribed time period, it should so indicate to the inquiring Party as soon as possible. Parties shall then endeavor to agree upon a later date for submission of the requested information. If Parties are unable to agree, the responding Party may seek approval for the late submission from the Commission upon a showing of good cause. It is then within the Commission's discretion to approve or disapprove such late filings and take any additional action that may be appropriate, such as extending the date for the inquiring Party to act.

In lieu of responses to information requests that would require the reproduction of voluminous documents or materials, the documents or materials may be made available for reasonable inspection and copying at a mutually agreeable designated location and time. In the event such information is available on computer diskette or other readily usable electronic medium, Party responding to the information request may make the diskette or such electronic medium available to the other Party and the Commission. Subject to objections that may be raised and to the extent practicable, the electronic files for spreadsheets will contain all formulae intact, and will not be entirely converted to values prior to submission.

A Party shall not be required, in a response to an information request, to provide data that are already on file with the Commission or otherwise part of the public record, or that may be stipulated to pursuant to Part IV, infra. The responding Party shall, in lieu of production of a document in the public record, include in its response to the information request an identification

of the document with reasonable specificity sufficient to enable the requesting Party to locate and copy the document. In addition, a Party shall not be required, in a response to an information request, to make computations, compute ratios, reclassify, trend, calculate, or otherwise rework data contained in its files or records.

A Party may object to responding to an information request that it deems to be irrelevant, immaterial, unduly burdensome, onerous or repetitious, or where the response contains information claimed to be privileged or subject to protection (confidential information). If a Party claims that information requested is confidential, and withholds production of all or a portion of such confidential information, the Party shall: (1) provide information reasonably sufficient to identify the confidential information withheld from the response, without disclosing privileged or protected information; (2) state the basis for withholding the confidential information (including, but not limited to, the specific privilege applicable or protection claimed for the confidential information and the specific harm that would befall the Party if the information were disclosed); and (3) state whether the Party is willing to provide the confidential information pursuant to a protective order governing this docket.

A Party seeking production of documents notwithstanding a Party's claim of confidentiality, may file a motion to compel production with the Commission.

The responses of each Party to information requests shall adhere to a uniform system of numbering agreed upon by Parties. For example, the first information request submitted by the Consumer Advocate in this docket shall be referred to and designated as "CA-SOP-IR-1", and a response to this information request shall be referred to and designated as "Response to CA-SOP-IR-1".

Each response shall be provided on a separate page and shall recite the entire question asked and set forth the response and/or reference to the attached responsive document, indicating the name of the respondent for each response.

**IV.
MATTERS OF PUBLIC RECORD**

To reduce unnecessary reproduction of documents and to facilitate these proceedings, identified matters of public record, such as reports that Young Brothers has filed with the Commission, published scientific or economic statistical data, material and textbooks, technical or industry journals relating to water transportation matters, and specified parts of the record in previous Commission dockets shall be admissible in this proceeding without the necessity of reproducing each document; provided that the document to be admitted is clearly identified by reference to the place of publication, file or docket number, and the identified document is available for inspection by the Commission, Parties, and Participants; and further provided that any Party or Participant has the right to explain, qualify, or conduct examination with respect to the identified document. The Commission can rule on whether the identified document can be admitted into evidence when a Party or Participant proffers such document for admission as evidence in this proceeding.

From time to time, Parties and Participants may stipulate in writing that such documents, or any portion of such documents, may be introduced into evidence in this proceeding.

**V.
COPIES OF PLEADINGS, BRIEFS, AND OTHER DOCUMENTS**

Public Utilities Commission 465 South King Street, First Floor Honolulu, HI 96813	Original plus 8 copies
Division of Consumer Advocacy Department of Commerce & Consumer Affairs 335 Merchant Street, Room 326 Honolulu, HI 96813	2 copies
Gareth K. Sakakida Managing Director Hawaii Transportation Association P. O. Box 30166 Honolulu, HI 96820	1 copy

Robert E. Lewis
Manager
Western Motor Tariff Bureau, Inc.
P. O. Box 30268
Honolulu, HI 96820

1 copy

Robert H. Thomas, Esq.
Sat K. Freedman, Esq.
Damon Key Leong Kupchak Hastert
1600 Pauahi tower
1001 Bishop Street
Honolulu, HI 96813
Attorneys for Hawaii Farm Bureau Federation

1 copy

All pleadings, briefs, and other documents required to be filed with the Commission shall be filed at the office of the Commission in Honolulu within the time limit prescribed pursuant to Section 6-61-15, Hawaii Administrative Rules ("**HAR**"). Copies of all filings shall be sent to the other Parties and Participants by hand delivery or by U.S. mail, postage prepaid.

In addition, if available, all Parties/Participants shall provide copies of their filings to the other Parties/Participants via diskette or e-mail in a standard electronic format that is readily available by the Parties/Participants. Parties/Participants agree to use, as much as practicable, Word 97, Word 2000, or Word 2003 as the standard programming format for filings in this case. However, if workpapers, documentation, or exhibits attached to any filing are not readily available in an electronic format, a Party/Participant shall not be required to convert such workpapers, documentation, or exhibits into an electronic format. Also, existing documents produced in response to requests need not be converted to Word 97/Word 2000/Word 2003 as long as the applicable format is identified. In the event a copy of a filing is delivered to a Party/Participant via diskette or e-mail, unless otherwise agreed to by such Party/Participant, the same number of copies of such filing, information request or information request response must still be delivered to such Party/Participant by hand delivery or via facsimile as provided in Part V above.

VI. COMMUNICATIONS

Section 6-61-29, Hawaii Administrative Rules, concerning ex parte communications is applicable to any communications between a Party or a Participant and the Commission. However, a Party or a Participant may communicate with Commission counsel through its own counsel or designated official only as to matters of process and procedure.

Communications between Parties and Participants shall either be through counsel or through designated representatives. All pleadings, papers, and other documents filed in this proceeding shall be served on other Parties and Participants as provided in Part V above.

VII. GENERAL

The foregoing procedures shall be applied in a manner consistent with the orderly conduct of this proceeding. Pursuant to HAR § 6-61-37, this Stipulation for Prehearing Order shall control the subsequent course of the proceeding, unless modified by Parties and Participants in writing or to prevent manifest injustice.

The Commission named WMTB and HTA as participants in this proceeding "to provide information that will assist the commission in its investigation of Transmittal No. 06-0001, and in developing a sound record." Order No. 22463 at 13. Further, the Commission, in granting HFBF participant status in this proceeding, found that HFBF's participation, similarly, "should assist the commission in its investigation and aid in developing a sound record." Order No. 22549 at 9, filed on June 21, 2006, in this proceeding. Accordingly, Participants' roles in this proceeding, as reflected in the Stipulated Regulatory Schedule, shall be to assist the Commission in developing a sound record by providing information as requested by the Commission, including responding to any information requests made by the Commission during the evidentiary hearing, if any, in this proceeding; Parties and Participants agree to Participant

HFBF's submission of the statement set forth in Exhibit "B" to this Stipulation.² Otherwise, Participants shall not (i) be signatories or required parties to the stipulation on the issues in this proceeding (item 14 of the Stipulated Regulatory Schedule) or (ii) submit position statements on outstanding issues (item 15 of the Stipulated Regulatory Schedule). Participants also shall not testify at the evidentiary hearing, if any, in this proceeding (item 16 of the Stipulated Regulatory Schedule), although they will continue to assist the Commission in developing a sound record by responding to any questions directed to them by the Commission.

This Stipulation for Prehearing Order may be executed by Parties and Participants in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.


² By agreeing to the submission of a statement by HFBF, Parties and other Participants do not necessarily agree (or disagree) with the substance of HFBF's statement. Parties and Participants acknowledge that the Commission's approval of this Stipulation for Prehearing Order does not necessarily signify approval of HFBF's statement set forth in Exhibit "B" or acceptance of HFBF's statement as a finding by the Commission.

DATED: Honolulu, Hawaii, June 27, 2006

YOUNG BROTHERS, LIMITED


WESTERN MOTOR TARIFF BUREAU, INC.


for 
P. Roy Catalani
Vice President of Strategic Planning
and Government Affairs


Robert E. Lewis
Manager


DIVISION OF CONSUMER ADVOCACY

HAWAII TRANSPORTATION ASSOCIATION

for 
John Cole
Executive Director


Gareth K. Sakakida
Managing Director

DAMON KEY LEONG KUPCHAK HASTERT


Robert H. Thomas, Esq.
Sat K. Freedman, Esq.

Attorneys for HAWAII FARM BUREAU
FEDERATION


APPROVED AND SO ORDERED AT HONOLULU, HAWAII

JUN 29 2006


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chair

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

Docket No. 2006-0120, In re Young Brothers, Tariff Transmittal No. 06-0001, **STIPULATION
FOR PREHEARING ORDER**

EXHIBIT "A"
STIPULATED REGULATORY SCHEDULE³
Docket No. 2006-0120

<u>DATE</u>	<u>PROCEDURAL STEPS</u>
1. Thursday, April 13, 2006	Transmittal No. 06-0001 filed with the Commission
2. Friday, May 11, 2006	Order No. 22463 issued suspending Transmittal No. 06-0001 and initiating an investigation
3. No later than Friday, June 23, 2006 ⁴	Young Brothers to submit responses to outstanding PUC information requests as soon as they are available, but in no event later than June 23, 2006; Young Brothers to supplement and update its Application, if necessary
4. Friday, June 23, 2006, through Friday, July 7, 2006 ⁵	Consumer Advocate to submit information requests to Young Brothers on a rolling basis
5. Monday, June 26, 2006	Public hearing in Hilo, Hawaii
6. Tuesday, June 27, 2006	Public hearing in Kona, Hawaii
7. Wednesday, June 28, 2006, through Wednesday, July 12, 2006 ⁶	Young Brothers to submit response to Consumer Advocate's information requests within 3 working days of receipt of electronic file of the requests
8. Monday, July 3, 2006	Public hearing in Kahului, Maui, Hawaii
9. Wednesday, July 5, 2006	Public hearing in Kaunakakai, Molokai, Hawaii
10. Thursday, July 6, 2006	Public hearing in Honolulu, Hawaii

³ This Stipulated Regulatory Schedule assumes that the only Parties and Participants in this proceeding are the signatories of the Stipulation for Prehearing Order. An amended Stipulation for Prehearing Order, including an amended Stipulated Regulatory Schedule, will be submitted, if required by the addition of other Parties or Participants to this proceeding.

⁴ Young Brothers shall submit its responses by this date unless any of the required information is not in Young Brothers' possession and not yet made available to Young Brothers, in which case Young Brothers will need to supplement its response at a later date.

⁵ The Consumer Advocate agrees to issue any information requests expeditiously throughout the course of this proceeding, to facilitate adherence to the Stipulated Regulatory Schedule and Parties agree to exchange information electronically to the extent possible.

⁶ Young Brothers agrees to respond to each of the Consumer Advocate's information requests within 3 working days of receipt of the electronic file of the requests, unless the information required is not in YB's possession and not yet made available to Young Brothers, in which case Young Brothers may supplement its response at a later date.

<u>DATE</u>	<u>PROCEDURAL STEPS</u>
11. Friday, July 7, 2006	Public hearing in Lihue, Kauai, Hawaii
12. Saturday, July 8, 2006	Public hearing in Lanai City, Lanai, Hawaii
13. Thursday, July 13, 2006	Parties (and Participants, if necessary or required) to hold technical meetings to discuss any outstanding matters
14. Friday, July 14, 2006	Stipulation on issues by Parties
15. Friday, July 14, 2006	Simultaneous position statements on outstanding issues, if any, each signed and verified by the respective Parties ⁷
16. Week of July 17, 2006	Evidentiary hearing ⁸

⁷ See note 7 below. Parties may waive the evidentiary hearing. In the event the evidentiary hearing has not been waived by Parties, each position statement shall be adopted as testimony by the respective Parties, or by designated persons adopting portions thereof.

⁸ Parties reserve their right to engage in settlement discussions at any time on any of the disputed issues pursuant to section 91-9(d), Hawaii Revised Statutes, and HAR § 6-61-35, including the right to waive the evidentiary hearing in this proceeding. Parties will promptly notify the Commission of any settlement and revise the Stipulated Regulatory Schedule as necessary. Participants shall not engage in settlement discussions or testify at the evidentiary hearing, if any, in this proceeding), although they will continue to assist the Commission in developing a sound record by responding to any questions directed to them by the Commission.

EXHIBIT "B"

STATEMENT OF HAWAII FARM BUREAU FEDERATION

Hawaii Farm Bureau Federation ("HFBF") initially sought to intervene, or in the alternative to participate in this proceeding. Upon the subsequent request of Young Brothers, Limited ("YB"), agreements to identify and implement interim solutions, and the State of Hawaii Department of Transportation's ("HDOT") agreement to include all Parties, Participants, and other stakeholders in seeking long-term solutions to harbor congestion, HFBF stipulated to withdraw its motion regarding intervention, and seek participation only. The Commission granted HFBF's Motion to Participate.

YB and HFBF are actively seeking *interim* solutions that may include all Parties and Participants. *Long-term* solutions to the issues listed in the Statement of the Issues (Section I) of the Stipulation for Prehearing Order, as well as addressing the overall issue of harbor congestion, are critical to the well being of Hawaii's economy, are within the jurisdiction of HDOT, and require efforts and solutions beyond the scope of this proceeding.

CERTIFICATE OF SERVICE

I hereby certify I have this date served a copy of the foregoing STIPULATION FOR
PREHEARING ORDER NO. 22582 upon the following persons, by causing
a copy hereof to be mailed, postage prepaid and properly addressed to each such person:

JOHN E. COLE
EXECUTIVE DIRECTOR, DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 Merchant Street, Room 326
Honolulu, Hawaii 96813

P. ROY CATALANI
VICE PRESIDENT OF STRATEGIC PLANNING AND
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GARETH K. SAKAKIDA
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Honolulu, Hawaii 96813



Karen Higashi

DATED: JUN 29 2006