

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, Rate Restructuring, Fuel)
 Price Adjustment Clause, and Other)
 Tariff Changes.)
 _____)

DOCKET NO. 2006-0396

ORDER NO. 23532

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

2007 JUL - 3 A 8:13

RECEIVED

Filed July 2, 2007
At 10 o'clock A .M.

Karen Higashi.
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi.

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Docket No. 2006-0396
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ORDER

By this Order, the commission: (1) grants the Parties' request for an extension of time, from June 29, 2007 to July 6, 2007, to file their settlement agreement; (2) approves the Parties' affirmative waiver of the evidentiary hearing, and thus, cancels the evidentiary hearing, scheduled for July 5 and 6, 2007; and (3) deletes from the procedural schedule the deadline dates for the filing of the Parties' post-hearing briefs.¹

I.

Background

In accordance with the procedural schedule that governs this proceeding: (1) the deadline for the Parties to file their settlement agreement, if any, is June 29, 2007; (2) the evidentiary hearing is scheduled to commence on July 5, 2007,

¹The Parties in this proceeding are YOUNG BROTHERS, LIMITED ("Young Brothers") and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), an ex officio party, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

9:00 a.m., for two days (July 5 and 6, 2007); and (3) the deadline dates for the simultaneous filing of the Parties' post-hearing briefs are July 27, 2007 (opening briefs) and August 6, 2007 (reply briefs).²

By letter dated June 28, 2007, the Parties informed the commission that they settled, in principle, all of the issues in this proceeding. In addition, the Parties requested a one-week extension of time, from June 29, 2007 to July 6, 2007, to file their settlement agreement, and waived the right to an evidentiary hearing.

II.

Discussion

A.

Extension to File Settlement Agreement

HAR § 6-61-23(a)(1) provides that, with respect to extensions of time:

Enlargement. (a) When by this chapter or by notice or by order of the commission, any act is required or allowed to be done at or within a specified time, the commission for good cause shown may at any time, in its discretion:

- (1) With or without motion or notice, order the period enlarged, if written request is made before the expiration of the period originally prescribed or as extended by a previous order[.]

HAR § 6-61-23(a)(1).

The Parties seek an extension of time from June 29, 2007 to July 6, 2007, to file their settlement

²Order No. 23311, filed on March 16, 2007; Commission's letter, dated April 10, 2007; and Order No. 23504, filed on June 22, 2007.

agreement, stating that they have reached a global settlement on all issues, but need additional time to memorialize their agreement. The additional time requested by the Parties will provide them with the opportunity to develop the schedules, exhibits, and other details in support of their settlement agreement.

The commission finds good cause to grant the Parties' request and approves their request for an extension of time, from June 29, 2007 to July 6, 2007, to file their settlement agreement.

B.

Waiver of Evidentiary Hearing

HRS § 27G-23(a) states:

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 conduct 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; see also HRS § 271G-17(d) (reference to hearing).

HRS § 91-9(d) provides:

Contested cases; notice; hearing; records.

.
(d) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

HRS § 91-9(d); accord HAR § 6-61-35 (with the commission's approval, any procedure in a contested case may be waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default).

Consistent with HRS § 91-9(d) and HAR § 6-61-35, the commission approves the Parties' affirmative waiver of the evidentiary hearing, based on their reasoning that with an agreement on the merits reached in principle, the evidentiary hearing is now moot. The commission, thus: (1) cancels as moot the evidentiary hearing, scheduled for July 5 and 6, 2007; and (2) deletes from the procedural schedule the deadline dates for the filing of the post-hearing briefs.

III.

Orders

THE COMMISSION ORDERS:

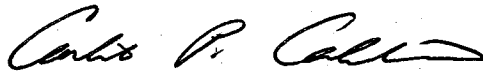
1. The Parties' request for an extension of time, from June 29, 2007 to July 6, 2007, to file their settlement agreement, is granted.

2. The Parties' affirmative waiver of the evidentiary hearing is approved, and the evidentiary hearing, scheduled for July 5 and 6, 2007, is cancelled as moot.

3. The deadline dates for the simultaneous filing of the Parties' post-hearing briefs on July 27, 2007 (opening briefs) and August 6, 2007 (reply briefs) are deleted from the procedural schedule as moot.

DONE at Honolulu, Hawaii JUL - 2 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

APPROVED AS TO FORM:



Michael Azama
Commission Counsel

2006-0396.dhl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23532 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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Counsel for YOUNG BROTHERS, LIMITED



Karen Higashi

DATED: JUL - 2 2007