

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)

YOUNG BROTHERS, LIMITED)

DOCKET NO. 2008-0266

For Approval of a General Rate)
Increase and Certain Tariff)
Changes.)
_____)

ORDER APPROVING PROPOSED
STIPULATED PROCEDURAL ORDER, AS MODIFIED

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

PUBLIC UTILITIES
COMMISSION

2009 MAR -5 P 12:22

FILED

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 APPROVING PROPOSED
STIPULATED PROCEDURAL ORDER, AS MODIFIED

By this Order, the commission approves, as modified herein, the proposed Stipulated Procedural Order submitted by the Parties on February 27, 2009.¹

I.

Procedural Order, as Modified

On February 27, 2009, the Parties submitted their proposed Stipulated Procedural Order, in compliance with the commission's directive.² Upon review, the commission approves the proposed Stipulated Procedural Order, subject to certain

¹The Parties are YOUNG BROTHERS, LIMITED ("Young Brothers") and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY, an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a). A copy of the Parties' proposed Stipulated Procedural Order is attached herein.

²See Order Suspending Application, filed on January 29, 2009; and Commission's letter, dated February 19, 2009.

modifications to the stipulated regulatory schedule. Specifically, for Regulatory Steps No. 10, No. 11, and No. 13, the commission, based on its present overall schedule for May 2009, and the need to set the deadline for the filing of a settlement agreement (if any) in this proceeding on a date prior to the commencement of the evidentiary hearing, will advance: (A) the filing date of the settlement agreement (if any), from June 19, 2009, to May 8, 2009; (B) the date of the prehearing conference, from May 13, 2009, to the week of May 4, 2009; and (A) the dates of the evidentiary hearing, from May 20 - 21, 2009, to May 13 - 14, 2009. Accordingly, Regulatory Steps No. 10, No. 11, and No. 13 are revised as follows:³

10. [Wednesday, May 13, 2009] Prehearing conference,
Week of May 4, 2009 if necessary

10A. Friday, May 8, 2009 Settlement agreement,
if any*

*Footnote 2 (previously footnote 3):
[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 in writing and subject to the Commission's approval, or upon the Commission's own motion.

11. [Wednesday and Thursday, Evidentiary hearing, unless
May 20-21, 2009] waived by Parties*
Wednesday and Thursday,
May 13 - 14, 2009

*Footnote 3 (previously footnote 2):
See [n.3 *infra.*] n.2, above.

12. Friday, June 12, 2009 Simultaneous opening briefs
by Parties

³Deletions are bracketed, additions are underscored.

13. Friday, June 19, 2009

Simultaneous reply briefs by
Parties, if necessary[, or
stipulation on issues by
Parties]

Lastly, Regulatory Step No. 14 states that the Parties request that the commission issue its decision and order by July 17, 2009, so that Young Brothers can provide its customers with 2-1/2 weeks' advance notice prior to the effective date of any increase in its tariff rates. While the commission acknowledges the Parties' request and intends to utilize its best efforts in meeting said request, the commission makes clear that the six-month deadline to issue its decision and order is July 29, 2009, pursuant to HRS 271G-17(d) and HAR § 6-65-40(c).⁴

II.

Order

THE COMMISSION ORDERS:

The Parties' proposed Stipulated Procedural Order, submitted on February 27, 2009, is approved as modified herein. Specifically, Regulatory Steps No. 10, No. 11, and No. 13 are modified to read as follows:

10. Week of May 4, 2009

Prehearing conference,
if necessary

10A. Friday, May 8, 2009

Settlement agreement,
if any*

*Footnote 2:

Parties will promptly notify the Commission of any settlement and revise the Stipulated Regulatory Schedule in writing and subject to the Commission's approval, or upon the Commission's own motion.

⁴See Order Suspending Application, Ordering Paragraph No. 1 (Young Brothers' application is suspended for a maximum period of six months from January 29, 2009, the date of the suspension order).

11. Wednesday and Thursday,
May 13-14, 2009

Evidentiary hearing, unless
waived by Parties*

*Footnote 3:
See n.2, above.

.

13. Friday, June 19, 2009

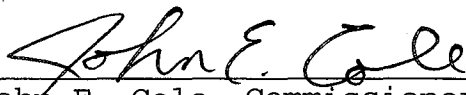
Simultaneous reply briefs by
Parties, if necessary

DONE at Honolulu, Hawaii

MAR - 5 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.laa

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 in)
Local Freight Tariff No. 5-A)
_____)

Docket No. 2008-0266

FILED

2009 FEB 27 P 12:33

PUBLIC UTILITIES
COMMISSION

PROCEDURAL ORDER

STIPULATION FOR PROCEDURAL ORDER

EXHIBIT A

and

CERTIFICATE OF SERVICE

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
)	
YOUNG BROTHERS, LIMITED)	Docket No. 2008-0266
)	
For Approval of a General Rate Increase)	
and Certain Tariff Changes in)	
Local Freight Tariff No. 5-A)	
<hr/>)	

STIPULATION FOR PROCEDURAL 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, collectively **Parties**) submit this Stipulation for Procedural Order (this **Stipulation** or **Stipulated Procedural Order**) to the Honorable Public Utilities Commission of the State of Hawaii (the **PUC** or **Commission**). This Stipulation is made as directed by Order Suspending Application, filed on January 29, 2009, with respect to the Application For Approval of a General Rate Increase and Certain Tariff Changes in Local Freight Tariff No. 5-A (the **Application**) filed by Young Brothers on December 19, 2008.

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

I.

STATEMENT OF THE ISSUES

The issues in this proceeding are:

1. Whether the general rate increase and other changes to Young Brothers' Local Tariff No. 5-A (***Tariff 5-A***) as proposed in its Application (***proposed tariff changes***) are just and reasonable, are not unjustly discriminatory, and do not make, give, or cause any undue or unreasonable preference, prejudice, or advantage to any particular person, locality, region, district, island, or description of traffic 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 changes support the need, in the public interest, for adequate and efficient transportation service.
3. Whether the proposed tariff changes enable Young Brothers, under honest, economical, and efficient management, to provide transportation services.

II.

SCHEDULE OF PROCEEDINGS

Parties shall adhere to the schedule of proceedings set forth in the Stipulated Regulatory Schedule attached to this Stipulation as Exhibit "A." (***Stipulated Regulatory Schedule***) Notwithstanding the above, the Stipulated Regulatory Schedule may be amended (1) as may be agreed in writing by Parties and approved by the Commission or (2) upon the Commission's own motion.

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 Procedural Order. To the extent practical, Parties will

cooperate by informally resolving questions regarding information requests and responses 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, the 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 below. 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-IR-1", and a response to this information request shall be referred to and designated as "Response to CA-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 and Parties and further provided that any Party 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 proffers such document for admission as evidence in this proceeding.

From time to time, Parties 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
Young Brothers, Limited P. O. Box 3288 Honolulu, HI 96801	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 Party by hand delivery or by U.S. mail, postage prepaid.

In addition, if available, a Party shall provide copies of its filings to the other Party via

diskette or e-mail in a standard electronic format that is readily available to Parties. Parties agree to use, as much as practicable, Word 97, Word 2000, Word 2003, or Word 2007 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 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 via diskette or e-mail, unless otherwise agreed to by such Party, the same number of copies of such filing, information request, or information request response must still be delivered to such Party 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 and the Commission. However, a Party may communicate with Commission counsel through its own counsel or designated official only as to matters of process and procedure.

Communications between Parties 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 as provided in Part V above.

VII.

GENERAL

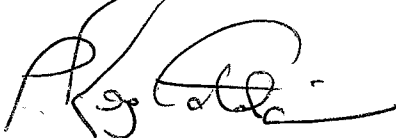
The foregoing procedures shall be applied in a manner consistent with the orderly conduct of this proceeding. This Stipulation for Procedural Order shall control the subsequent

course of the proceeding, unless modified by Parties in writing and approved by the Commission, or upon the Commission's own motion.

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

DATED: Honolulu, Hawaii, February 27, 2009

YOUNG BROTHERS, LIMITED



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

DIVISION OF CONSUMER ADVOCACY



Catherine P. Awakuni
Executive Director

APPROVED AND SO ORDERED AT HONOLULU, HAWAII _____

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By _____
Carlito P. Caliboso, Chair

By _____
John E. Cole, Commissioner

By _____
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Michael Azama
Commission Counsel

Docket No. 2008-0266, *In re Young Brothers*, Application for Approval of a General Rate Increase and Certain Tariff Changes, **STIPULATION FOR PROCEDURAL ORDER**

EXHIBIT "A"
STIPULATED REGULATORY SCHEDULE¹
Docket No. 2008-0266

<u>DATE</u>	<u>PROCEDURAL STEPS</u>
1. Friday, December 19, 2008	Application filed with the Commission
2. Thursday, January 29, 2009	Order Suspending Application issued
3. Wednesday, February 18, 2009	Deadline for motions for intervention or participation
4. Monday, March 16, 2009	Consumer Advocate information requests (<i>IRs</i>) to YB as soon as available, but no later than March 16, 2009
5. Monday, March 30, 2009	Young Brothers to submit responses to outstanding IRs as soon as available, but in no event later than March 30, 2009
6. Thursday, April 9, 2009	Consumer Advocate testimonies, exhibits, and workpapers
7. Friday, April 17, 2009	Young Brothers IRs to Consumer Advocate as soon as available, but in no event later than April 17, 2009
8. Friday, April 24, 2009	Consumer Advocate to submit responses to YB's IRs as soon as they are available, but in no event later than April 24, 2009
9. Friday, May 1, 2009	Young Brothers rebuttal testimonies, exhibits, and workpapers or informal settlement proposal to Consumer Advocate
10. Wednesday, May 13, 2009	Prehearing conference, if necessary
11. Wednesday and Thursday, May 20-21, 2009	Evidentiary hearing, unless waived by Parties ²
12. Friday, June 12, 2009	Simultaneous opening briefs by Parties

¹ This Stipulated Regulatory Schedule assumes that the only parties in this proceeding are the signatories of the Stipulation for Procedural Order. An amended Stipulation for Procedural Order, including an amended Stipulated Regulatory Schedule, will be submitted, if required by the addition of other parties or participants to this proceeding.

² See n.3 *infra*.

DATE

PROCEDURAL STEPS

- | | |
|----------------------------|--|
| 13. Friday, June 19, 2009 | Simultaneous reply briefs by Parties, if necessary, or stipulation on issues by Parties ³ |
| 14. Friday, July 17, 2009 | Parties' request for a decision and order by this date. ⁴ |
| 15. Monday, August 3, 2009 | Effective date of any rate increase ⁵ |

³ 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 in writing and subject to the Commission's approval, or upon the Commission's own motion.

⁴ Parties request a decision and order by this date so that YB can provide its customers with two and one-half weeks' notice prior to the effective date of any new rates.

⁵ Under Parameters of Zone Practice of Young Brothers, Limited Pursuant to Decision and Order No. 24139 filed in Docket No. 01-0255 on April 22, 2008 and accepted by the Commission by Order No. 24179 filed on May 7, 2008, the Commission ruled that YB may seek rate increases and decreases, or both, under a general rate case to be effective no earlier than one year after the effective date of a decision and order in the immediately preceding Zone Practice filing. By Decision and Order filed on July 29, 2008, the Commission approved an across-the-board 5.5 percent increase in rates proposed by Young Brothers in a zone practice filing under Transmittal No. 08-0005, to be "effective from August 1, 2008." Accordingly, any rate increases approved by the Commission in this present proceeding may not be effective before August 1, 2009. See also section 271G-17, Hawaii Revised Statutes, and section 6-65-40, Hawaii Administrative Rules, ("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.").

CERTIFICATE OF SERVICE

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

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR, DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. Box 541
Honolulu, Hawaii 96809

P. ROY CATALANI
VICE PRESIDENT OF STRATEGIC PLANNING AND
GOVERNMENT AFFAIRS
YOUNG BROTHERS, LIMITED
P. O. Box 3288
Honolulu, Hawaii 96801

CERTIFICATE OF SERVICE

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

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

P. ROY CATALANI
VICE PRESIDENT OF STRATEGIC PLANNING
AND GOVERNMENT AFFAIRS
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Honolulu, HI 96801