

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 THE PARTIES'
REQUEST TO AMEND THE REGULATORY SCHEDULE

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

PUBLIC UTILITIES
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FILED

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In the Matter of the Application of))	
YOUNG BROTHERS, LIMITED)	Docket No. 2008-0266
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For Approval of a General Rate)	
Increase and Certain Tariff)	
Changes.)	
_____)	

ORDER APPROVING THE PARTIES'
REQUEST TO AMEND THE REGULATORY SCHEDULE

By this Order, the commission approves the Parties' request, dated April 9, 2009, to amend the regulatory schedule.¹ Accordingly: (1) Procedural Steps No. 7 and No. 8, governing the issuance of information requests ("IRs") by Young Brothers to the Consumer Advocate, and the Consumer Advocate's responses thereto, are replaced with a new Procedural Step No. 6, by which the Parties agree to informally exchange discovery or engage in settlement discussions, or both, between April 20 and April 27, 2009; and (2) for Procedural Step No. 7 (formerly Procedural Step No. 6), the deadline for the Consumer Advocate to file its testimonies, exhibits, and workpapers, is extended from April 9, 2009 to April 27, 2009.

¹The Parties are YOUNG BROTHERS, LIMITED ("Young Brothers" or "YB") 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 § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

I.

Extensions of Time

As set forth in the commission's Order Approving Proposed Stipulated Procedural Order, as Modified, filed on March 5, 2009 ("Procedural Order"), the relevant procedural dates that govern this rate case proceeding include:

<u>Procedural Step</u>	<u>Date(s)</u>
4. Consumer Advocate's IRs to YB	March 16, 2009
5. YB's responses to Consumer Advocate's IRs	March 30, 2009
6. Consumer Advocate's testimonies, exhibits, and workpapers	April 9, 2009
7. YB's IRs to the Consumer Advocate	April 17, 2009
8. Consumer Advocate's responses to YB's IRs	April 24, 2009
9. YB's rebuttal testimonies, exhibits, and workpapers or informal settlement proposal	May 1, 2009
10. Prehearing conference, if necessary	Week of May 4, 2009
10A. Settlement agreement, if any*	May 8, 2009
*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.	
11. Evidentiary hearing, unless waived by the Parties*	May 13-14, 2009
*Footnote 3: See n.2, above.	
12. Parties' simultaneous opening briefs	June 12, 2009
13. Parties' simultaneous reply briefs, if necessary	June 19, 2009

Consistent with Procedural Steps No. 4 and No. 5, on March 16, 2009, the Consumer Advocate issued its IRs, to which Young Brothers responded on March 30, 2009. Now, by letter dated April 9, 2009, the Consumer Advocate represents that the Parties submit for the commission's approval certain agreed-upon

amendments to the regulatory schedule. Specifically, the Parties propose to: (1) replace Procedural Steps No. 7 and No. 8, governing the issuance of IRs by Young Brothers to the Consumer Advocate (April 17, 2009 deadline), and the Consumer Advocate's responses thereto (April 24, 2009 deadline), with a new Procedural Step No. 6, by which the Parties agree to informally exchange discovery or engage in settlement discussions, or both, during the period April 20 - 27, 2009; and (2) extend the deadline for the Consumer Advocate to file its testimonies, exhibits, and workpapers, from April 9, 2009 to April 27, 2009, for Procedural Step No. 7 (formerly Procedural Step No. 6).

In support of the Parties' request, the Consumer Advocate states:

. . . . Due to the limited staff resources, numerous utility docket schedule conflicts including scheduled public meetings pursuant to the Commission's Order issued on March 20, 2009, the Consumer Advocate is unable to file its comprehensive direct testimonies on April 9, 2009.

On March 23, 2009, the Consumer Advocate received the Commission's Order scheduling Public Meetings setting forth the Commission's intentions to hold public meetings for Docket No. 2008-0266, with the last public meeting to be held a mere four (4) business days prior to the date, April 9, 2009, that the Consumer Advocate is to file its direct testimony, exhibits and work-papers. The Consumer Advocate is concerned that the current regulatory schedule does not provide the Consumer Advocate with the opportunity to meet its statutory duties of representing consumers. By way of example, in at least one prior Commission proceeding, the Consumer Advocate filed its statement of position prior to a Commission scheduled public hearing and subsequently received heavy criticism for failing its statutory mandate to represent rate payers in its failure to include consideration of facts and comments provided at the related public hearing.

Therefore, due to scheduling conflicts beyond the Consumer Advocate's control and the intent of the Commission to schedule public meetings for this docketed matter less than a week prior to the deadline for the filing of the Consumer Advocate's direct testimony and exhibits, the Consumer Advocate and YB respectfully request the Commission's approval for the proposed amended regulatory schedule to allow adequate time to conduct discovery, enter into settlement discussions and prepare for [the] evidentiary hearing, if necessary, after allowing for public comments to be considered.

Consumer Advocate's letter, dated April 9, 2009, at 1-2.

HAR § 6-61-23, governing enlargements of time, provides:

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; or
- (2) Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action on jurisdictional matters and where any order expressly provides that no enlargement shall be granted.

(b) Motions for extensions of time and requests or stipulations for continuances must be in writing, except when made at hearing. Ordinarily, when a matter is to be submitted on concurrent briefs, extensions will not be granted unless a stipulation is filed with the commission.

HAR § 6-61-23; see also Procedural Order, Section II, Schedule of Proceedings (the stipulated regulatory schedule may be amended as agreed-upon by the Parties in writing and approved by

the commission, or upon the commission's own motion), and Section VII, General (the Procedural Order shall control the subsequent course of this proceeding, unless modified by the Parties in writing and approved by the commission, or upon the commission's own motion).

Here, the Parties propose to replace Procedural Steps No. 7 and No. 8 with a new Procedural Step No. 6, by which the Parties agree to informally exchange discovery or engage in settlement discussions, or both, from April 20 to April 27, 2009. The Parties, in effect, through their proposal, seek to replace the steps governing the formal issuance of IRs by Young Brothers and the Consumer Advocate's responses thereto, with the informal discovery process to govern the remainder of this proceeding. Such a proposal appears consistent with "secur[ing] the just, speedy, and inexpensive determination of [this] proceeding," and thus, is approved by the commission.² In addition, based on the Consumer Advocate's representations, the commission finds good cause to approve the request for additional time to complete and submit the Consumer Advocate's testimonies, exhibits, and workpapers, from April 9, 2009 to April 27, 2009.

²See also Procedural Order, Section II, Schedule of Proceedings (the stipulated regulatory schedule may be amended as agreed-upon by the Parties in writing and approved by the commission, or upon the commission's own motion), and Section VII, General (the Procedural Order shall control the subsequent course of this proceeding, unless modified by the Parties in writing and approved by the commission, or upon the commission's own motion).

II.

Orders

THE COMMISSION ORDERS:

1. The Parties' request, dated April 9, 2009, to amend the regulatory schedule, is approved. Accordingly: (A) Procedural Steps No. 7 and No. 8, governing the issuance of IRs by Young Brothers to the Consumer Advocate, and the Consumer Advocate's responses thereto, are replaced with a new Procedural Step No. 6, by which the Parties agree to informally exchange discovery or engage in settlement discussions, or both, between April 20 and April 27, 2009; and (B) for Procedural Step No. 7 (formerly Procedural Step No. 6), the deadline for the Consumer Advocate to file its testimonies, exhibits, and workpapers, is extended from April 9, 2009 to April 27, 2009.

2. Procedural Steps No. 6 to No. 12 of the regulatory schedule, as amended, are as follows:

- | | | |
|-----|---|---------------------|
| 6. | Parties' exchange of informal discovery and/or settlement discussions | April 20-27, 2009 |
| 7. | Consumer Advocate's testimonies, exhibits, and workpapers | April 27, 2009 |
| 8. | YB's rebuttal testimonies, exhibits, and workpapers or informal settlement proposal | May 1, 2009 |
| 9. | Prehearing conference, if necessary | Week of May 4, 2009 |
| 9A. | Settlement agreement, if any* | May 8, 2009 |

*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.

- | | | |
|-----|--|-----------------|
| 10. | Evidentiary hearing, unless waived by the Parties* | May 13-14, 2009 |
|-----|--|-----------------|

*Footnote 3:

See n.2, above.

11. Parties' simultaneous opening briefs
12. Parties' simultaneous reply briefs,
if necessary


June 12, 2009

June 19, 2009


DONE at Honolulu, Hawaii

APR 27 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

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
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DIVISION OF CONSUMER ADVOCACY
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