

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
YOUNG BROTHERS, LLC) Transmittal No. 20-0003
For Approval of Emergency Changes) Order No. **37211**
to its Sailing Schedule.)
_____)

APPROVING A CONDITIONAL EXTENSION OF YOUNG BROTHERS'
ADJUSTED SAILING SCHEDULE

By this Order the Commission:

(1) recognizes the ongoing impact of YOUNG BROTHERS, LLC's ("Young Brothers," "YB," or the "Company") adjusted sailing schedule on its customers and the public,¹ as well as recent Hawaii County Council Resolution 679-20 emphasizing the importance of exploring all opportunities to continue uninterrupted cargo service to the islands of the State,² and,

(2) upon the condition that YB include in its rate design proposal filed in conjunction with its Emergency Rate Relief

¹Young Brothers' adjusted sailing schedule is as set forth in Order No. 37166, "Approving a Brief Extension and Adjustments to Young Brothers' Temporary, Emergency Changes to its Sailing Schedule," filed on June 4, 2020 ("Order No. 37166").

²Available at:
<http://records.co.hawaii.hi.us/WebLink/0/doc/998492/Page1.aspx>.

Request,³ a robust analysis of alternatives to the current adjusted sailing schedule that would seek to address YB's cost concerns but also move towards restoration of the pre-COVID sailing schedule for the benefit of customers, approves extension of YB's adjusted sailing schedule, as requested in YB's July 6, 2020 Letter to the Commission,⁴ until August 17, 2020, the date by which YB requests a Commission decision on its Emergency Rate Relief Request.

I.

PROCEDURAL HISTORY

On April 24, 2020, YB filed its short-notice Transmittal⁵ pursuant to Hawaii Administrative Rules ("HAR") §§ 16-601-111 and

³Docket No. 2019-0117, "Young Brothers LLC's Motion for Leave and for Emergency or Temporary Rate Relief ("YB Rate Relief Motion"); Memorandum in Support of Motion ("YB Rate Relief Memorandum"); Exhibits A and B; Declaration of Jeremiah Ana; Declaration of Christopher Edwards; and Certificate of Service," filed on July 7, 2020 (collectively, "Emergency Rate Relief Request"). The Commission will address other issues raised in the Emergency Rate Relief Request outside of the instant Order.

⁴YB "Request for Further Extension of Adjusted Sailing Schedule," filed on July 6, 2020 ("July 6, 2020 Letter Request" or "July 6, 2020 Letter"), available at: <https://puc.hawaii.gov/wp-content/uploads/2020/04/Letter-to-PUC-re-YB-Request-for-Ext-of-Adj-Sailing-Sch.pdf>.

⁵Transmittal No. 20-0003, Short-Notice Tariff Filing; Exhibit 1; Verification; and Certificate of Service," filed on April 24, 2020 ("Transmittal No. 20-0003"). YB's Tariff Transmittal No. 20-0003 and public comments that have been filed regarding the Transmittal are available here: <https://puc.hawaii.gov/main/yb-tariff-transmittal-no-20-0003-for-approval-of-emergency-changes-to-its-sailing-schedule/>.

-112 and §§ 16-605-5, -30, -40, and -41, seeking Commission authority to modify its Commission-approved sailing schedule, as follows:

1. Sailings between Honolulu and Kahului will be reduced from three sailings to two, where the Wednesday/Thursday (from Honolulu to Kahului) and Thursday/Friday (from Kahului to Honolulu) sailings will be eliminated.
2. Sailings between Honolulu and Hilo will be reduced from two sailings to one, where the Saturday/Monday (from Honolulu to Hilo) and Monday/Wednesday (from Hilo to Honolulu) sailings will be eliminated.
3. Sailings between Honolulu and Kaunakakai will be reduced from two sailings to one as well as modifying the days of departures and arrivals, where the Sunday/Monday and Tuesday/Thursday (from Honolulu to Kaunakakai) and Monday/Tuesday and Wednesday/Thursday (from Kaunakakai to Honolulu) sailings will be eliminated and replaced with Saturday/Sunday (from Honolulu to Kaunakakai) and Sunday/Monday (from Kaunakakai to Honolulu) sailings.
4. Sailings between Honolulu and Kaunapali will be modified by changing the one sailing from a Tuesday/Wednesday (Honolulu to Kaunapali) and Wednesday/Thursday (Kaunapali to Honolulu) to Saturday/Sunday (Honolulu to Kaunapali) and Sunday/Sunday (Kaunapali to Honolulu) sailings.

In Order No. 37128, filed on May 4, 2020,⁶ the Commission temporarily and conditionally approved Young Brothers' emergency request to change its sailing schedule as set forth in Transmittal

⁶YB requested an effective date of May 5, 2020, for the changes to its sailing schedule.

No. 20-0003 for a 30-day period.⁷ During that 30-day period, the Commission required YB to provide additional information to the Commission based on questions raised by the Consumer Advocate, which included updates on YB's financial condition and actions it is taking to minimize impacts on Neighbor Island customers.⁸

On May 28, 2020 YB filed its request to extend the sailing schedule temporarily approved in Order No. 37128, for a ninety (90) day period, stating that "the continuation of the adjusted sailing schedule is critical and necessary to help mitigate against the impending cash shortfall and the severe losses that Young Brothers is projected to suffer through at least 2020."⁹

⁷See Order No. 37128, available at: <https://puc.hawaii.gov/wp-content/uploads/2020/05/TRANSMITTAL-NO.-20-0003.YB.pdf>.

⁸On May 22, 2020, YB submitted a report providing the Commission with information about its financial condition pursuant to Order No. 37128. "YB Report Pursuant to Order No. 37128," filed on May 22, 2020. Previously, YB had also submitted a "Response to COVID-19 Financial and Procedural Update Request," on May 5, 2020, in Docket No. 2019-0117, which also provided the Commission with information regarding its financial condition.

⁹Transmittal No. 20-0003 May 28 Extension Request at 2, available at: <https://puc.hawaii.gov/main/yb-tariff-transmittal-no-20-0003-for-approval-of-emergency-changes-to-its-sailing-schedule/>.

Separately, on June 2, 2020, the Commission filed Order No. 37161 in Docket No. 2020-0084, instituting an investigation into YB's current financial condition, including to address its current access to funding and contingency plans in light of its dire financial situation.

However, on June 3, 2020, YB filed its Transmittal No. 20-0003 June 3 Modification Request, requesting new sailing schedule adjustments that would (1) change the date of its sailing between Honolulu and Hilo from a Tuesday departure from Honolulu, to a Saturday departure from Honolulu, such that the barge arrives in Hilo on Monday, (2) add a second weekly sailing to Kaunakakai, and (3) change its arrival in Kaumalapau to Wednesday (instead of Sunday).¹⁰

On June 4, 2020, the Commission issued Order No. 37166, approving:

(1) An extension through June 11, 2020, of YB's sailing schedule changes originally set forth in Tariff Transmittal

¹⁰See Letter Re: "YB Tariff Transmittal No. 20-0003, Young Brothers, LLC, for Approval of Emergency Changes to its Sailing Schedule - Modification to Adjusted Sailing Schedule," filed on June 3, 2020, requesting modifications to its sailing schedule change extension request, filed on May 28, 2020 ("Transmittal No. 20-0003 June 3 Modification Request"), available at: <https://puc.hawaii.gov/main/yb-tariff-transmittal-no-20-0003-for-approval-of-emergency-changes-to-its-sailing-schedule/>.

Also on June 3, 2020, the Consumer Advocate filed its Statement of Position regarding YB's Transmittal No. 20-0003 June 3 Modification Request. "Division of Consumer Advocacy's Statement of Position re: YB's Transmittal No. 20-0003 June 3 Modification Request," filed on June 3, 2020 ("CA June 3 SOP"), available at: <https://puc.hawaii.gov/main/yb-tariff-transmittal-no-20-0003-for-approval-of-emergency-changes-to-its-sailing-schedule/>.

No. 20-0003, filed on April 24, 2020, and approved in Order No. 37128;¹¹

(2) A 30-day extension effective June 12, 2020,¹² of the sailing schedule changes originally set forth in Transmittal No. 20-0003 regarding the sailing schedule from Honolulu to Kahului, Maui, which eliminated the Wednesday sailing out of Honolulu (reducing three weekly sailings from Honolulu to Kahului down to two weekly sailings), and resulted in the following:

- Monday afternoon departure from Honolulu, and a Tuesday morning arrival in Kahului; and
- Thursday afternoon departure from Honolulu, and a Friday morning arrival in Kahului;¹³ and

(3) YB's requested new sailing schedule adjustments, set forth in its Transmittal No. 20-0003 June 3 Modification Request, for 30 days, effective June 12, 2020, which (a) change YB's sailing between Honolulu and Hilo from a Tuesday departure from Honolulu, to a Saturday departure from Honolulu, such that the barge will arrive in Hilo on Monday, (b) add a second weekly

¹¹Order No. 37128, "Approval of Young Brothers' Temporary, Emergency Changes to its Sailing Schedule," filed on May 4, 2020 ("Order No. 37128"), available at: [https://puc.hawaii.gov/wp-content/uploads/2020/05/TRANSMITTAL-NO.-20-0003.YB .pdf](https://puc.hawaii.gov/wp-content/uploads/2020/05/TRANSMITTAL-NO.-20-0003.YB.pdf).

¹²To align the expiration of this sailing schedule change with the others discussed in 3), below.

¹³See Tariff Transmittal No. 20-0003 at 7.

sailing to Kaunakakai, and (c) change YB's barge arrival in Kaumalapau to Wednesday (instead of Sunday).¹⁴

On June 29, 2020, YB filed its Cost Savings Report pursuant to Order No. 37166, detailing the costs associated with the sailing schedule changes approved in that Order.¹⁵

On July 6, 2020, YB filed a letter with the Commission requesting that the Commission approve YB's "request to extend the currently approved adjusted sailing schedule (currently set to expire on July 12, 2020) for at least 90 days."¹⁶

The Commission issued an information request to YB on July 8, 2020,¹⁷ inquiring about any safety measures that YB has taken since its Hilo Barge Incident,¹⁸ to which YB responded on July 9, 2020, as discussed further below.¹⁹

¹⁴See Transmittal No. 20-0003 June 3 Modification Request.

¹⁵YB "Tariff Transmittal No. 20-0003 - Application of Young Brothers, LLC for Approval of Emergency Changes to its Sailing Schedule - Filing of Cost Savings Report," filed on June 29, 2020 ("Cost Savings Report").

¹⁶July 6, 2020 Letter Request at 1. The "currently approved" sailing schedule YB refers to in its July 6, 2020 Letter Request is as set forth in Order No. 37166.

¹⁷See Commission's PUC-YB-IR-101, filed on July 8, 2020, available at: https://puc.hawaii.gov/wpcontent/uploads/2020/04/TransmittalNo.20-0003_FINALPUC-IR-101_7-8-2020_ci.pdf.

¹⁸See Young Brothers, LLC's Updates Regarding the Hilo Barge Incident, dated June 29, 2020.

¹⁹YB Response to PUC-YB-IR-101, filed on July 9, 2020, available at: <https://puc.hawaii.gov/main/yb-tariff-transmittal->

II.

DISCUSSION

A.

Legal Standard

In Transmittal No. 20-0003, Young Brothers cited HAR §§ 16-601-111 and -112 and §§ 16-605-5, -30, -40, and -41 as the relevant authority for the Commission's review of its requested relief. In Order No. 37128, the Commission found that it had the authority to grant the requested relief in an expedited manner, pursuant to Hawaii Revised Statutes ("HRS") § 271G-17(b), which states that "[t]he [C]ommission may in its discretion and for good cause shown allow [a tariff] change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions." HAR § 16-605-41(a) further states:

Short notice tariff filing. (a) The commission may grant a request for a change or addition to tariffs on less than forty-five days' notice if it finds that an emergency exists and the applicant carrier has proven that any delay in implementing the change or addition will result in substantial damage to the carrier or its shipper. The carrier shall include in its application a full statement of the need for implementing the change or addition on less than forty-five days' notice.

[no-20-0003-for-approval-of-emergency-changes-to-its-sailing-schedule/](#).

B.

Commission's Decision

YB's original Transmittal No. 20-0003 filing emphasized that cargo volumes have increasingly declined since Governor Ige's March 23, 2020, "State at Home" proclamation.²⁰ In Order No. 37166, the Commission's most recent order addressing the adjusted sailing schedule, the Commission stated that it would "assess whether to extend [YB's adjusted] sailing schedule pending receipt of information regarding whether YB will receive the financial support it requests during the upcoming Legislative session, scheduled to open on June 15, 2020, which could serve to put YB in an improved position to re-expand its sailing schedule, services, and make additional improvements, to better serve its customers."²¹ In its July 6, 2020 Letter Request, YB informed the Commission that "[t]o date, YB has not received any additional information confirming the potential receipt of financial support by YB from the Hawaii State Legislature or other sources."²² The Commission

²⁰Transmittal No. 20-0003 at 6. On June 10, 2020, Governor Ige issued his Ninth Supplementary Emergency Proclamation, amending and restating all prior COVID-19 related State emergency proclamations to support ongoing State and County responses, until July 31, 2020. "Ninth Supplementary Proclamation Related to the COVID-19 Emergency," available at: <https://governor.hawaii.gov/wp-content/uploads/2020/06/2006097A-ATG-Ninth-Supplementary-Proclamation-COVID-19-distribution-signed.pdf>.

²¹Order No. 37166 at 10 (footnote omitted).

²²July 6, 2020 Letter Request at 2.

takes notice that the Hawaii State Legislature adjourns today, July 10, 2020, and the Commission is not in receipt of any information that YB has received or will receive the financial support it has requested.²³

In YB's July 6, 2020 Letter Request, YB states that its cash flow forecasts show that YB's "financial condition remains extremely dire, and the continuation of the adjusted sailing schedule is critical and necessary to help mitigate against the impending cash shortfall and the severe losses that Young Brothers is projecting to suffer through at least 2020."²⁴ YB further states that "[t]he approximate \$4 million in Free Cash Flow that Young Brothers expects to save over the remainder of July through the remainder of 2020 is primarily attributable to this adjusted sailing schedule."²⁵

Noting and refuting "public speculation and concern that the currently approved sailing schedule has resulted in a lack of cargo capacity for barges returning to Honolulu from the port of Hilo[,]"²⁶ YB argues that

²³See 2020 Legislative Timetable, available at: <https://www.capitol.hawaii.gov/docs/2020calendar.pdf>.

²⁴July 6, 2020 Letter Request at 2.

²⁵July 6, 2020 Letter Request at 2.

²⁶July 6, 2020 Letter Request at 3 (referencing Attachment 4 to the Letter Request).

the primary purpose of reducing its sailing schedule is to mitigate the economic impacts YB has experienced since the onset of the COVID-19 pandemic, particularly as these impacts exacerbate the impending cash shortfall issues YB is now facing. Accordingly, YB would not recommend a reversion to its pre-COVID sailing schedule at least until its cash shortfall issues are resolved in the near- to mid-term.²⁷

In light of these statements and the public concerns expressed, the Commission issued PUC-YB-IR-101 on July 8, 2020, to gain a better understanding of the relationship between YB's cash shortfall, on the one hand, and necessary safety precautions it may need to implement, particularly in light of the Hilo Barge Incident, on the other, as those factors relate to YB's July 6, 2020, request to extend its adjusted sailing schedule.

In response to PUC-YB-IR-101, YB stated, among other things, that

[i]t is YB's position that there presently is insufficient cargo tonnage on a normal, recurring basis to justify a reversion to its pre-COVID sailing schedule (i.e., two weekly sailings to the Port of Hilo and three weekly sailings to the port of Kahului). The reduction in sailings has assisted YB to manage its cash liquidity situation and extends its limited cash balances by eliminating the fixed operating expenses of additional sailings.²⁸

²⁷July 6, 2020 Letter Request at 3.

²⁸YB Response to PUC-YB-IR-101(d).

YB further states that it

will continue to diligently evaluate whether the cargo volumes are increasing on a normal, recurring basis, and will generate sufficient revenues to offset the fixed operating expenses burden of adding another sailing to the affected ports over an extended period. To the extent that the increased cargo volumes do not offset these costs, or if the increase in cargo volumes appears to be temporary or short term in nature, it would not be prudent and in the public interest to justify a reversion to its pre-COVID sailing schedule.²⁹

Based on the above responses, the Commission observes that YB's primary motivation for its adjusted sailing schedule proposals during this time appears to be cost-related. YB's ongoing assessment of the relationship between fluctuations or trends in cargo volume,³⁰ associated costs and revenues, safety, and customer needs remains unclear to the Commission.

As noted above, on July 8, 2020, the Hawai'i County Council passed Resolution 679-20, which "Urges Young Brothers and the Public Utilities Commission to Explore All Opportunities to Continue Uninterrupted Cargo Service to the Islands of the State of Hawai'i," finding that YB's reduced sailings to Hilo and Kahului

²⁹YB Response to PUC-YB-IR-101(d) (emphasis added).

³⁰YB notes its general projected cargo volume numbers for the remainder of 2020 in its YB Rate Relief Memorandum at 22, and discusses the cargo volumes and trends it has seen thus far in 2020 in its July 6, 2020 Letter Request at 6, but the Commission has not seen a more granular assessment of predicted future cargo volume shifts related to the ongoing COVID-19 situation and other factors for the remainder of 2020 and beyond.

Harbors “reduce[] carrying capacity, constrain[] intrastate commerce, and increase[] the potential for service interruptions due to incidents arising from improper container loads,” that the cessation of water carrier service is “contrary to the stated intent of the Hawai‘i Water Carrier Law” and an “unacceptable outcome,” and urging YB and the Commission “to explore all opportunities to continue uninterrupted cargo service to the islands of the State [], while maintaining ‘just and reasonable’ rates as required by the Hawai‘i Water Carrier Law.”³¹

As has been noted in prior Commission orders regarding YB’s requested sailing schedule adjustments, the Commission has also received and continues to receive many public comments expressing concerns about the impact of the adjusted sailing schedule, particularly on customers and the public in the Hilo area, and urging the Commission to require YB to restore its pre-COVID sailing schedule.³² While YB’s sailing schedule adjustments approved in Order No. 37166 changed the date of the Honolulu to Hilo sailing, YB did not propose restoring a second

³¹Hawai‘i County Council Resolution 679-20, available at: <http://records.co.hawaii.hi.us/WebLink/0/doc/998492/Page1.aspx>.

³²Public comments are posted here: <https://puc.hawaii.gov/main/yb-tariff-transmittal-no-20-0003-for-approval-of-emergency-changes-to-its-sailing-schedule/>, and in Docket No. 2020-0084 in the Commission’s DMS system, available at: <https://dms.puc.hawaii.gov/dms/>.

weekly sailing to Hilo,³³ nor does YB currently propose restoring a second weekly sailing to Hilo (or a third weekly sailing to Kahului) in its July 6, 2020 Letter Request.

Given the above discussion, the Commission finds it necessary to pursue other solutions to the ongoing issues caused by the adjusted sailing schedule. The Commission observes that on July 7, 2020, Young Brothers filed its Emergency Rate Relief Request in Docket No. 2019-0117, requesting a Commission decision on by August 17, 2020, in light of YB's "financially dire situation[.]"³⁴ In its Emergency Rate Relief Request, YB further states that "applying an across-the-board percentage to all of Young Brothers' present rates is not reasonable at the present time."³⁵ As such, "Young Brothers will update the instant Motion with the Company's proposed implementation of the \$30,418,706 temporary rate increase that will better reflect a gradual movement towards the implementation of cost-based rates for each type of commodity transported."³⁶

³³See Transmittal No. 20-0003 June 3 Modification Request.

³⁴YB Rate Relief Motion at 2 n.3.

³⁵YB Emergency Memorandum at 27.

³⁶YB Emergency Memorandum at 27. The Commission refers to YB's intention to update its Motion with a proposed tiered implementation of cost-based rates as its "rate design proposal."

In light of this intent to file a rate design proposal in conjunction with its Emergency Rate Relief Request, the Commission directs YB to include in its rate design proposal,³⁷ a robust analysis of alternatives to the current adjusted sailing schedule that would address YB's cost concerns but also move towards restoration of the pre-COVID sailing schedule for the benefit of customers.³⁸

³⁷The Commission will address the filing deadline for YB's rate design proposal outside of the instant Order but emphasizes here the expedited nature of the timeframe YB requests for its Emergency Rate Relief Request, as it will affect that deadline. The consideration of alternatives to the adjusted sailing schedule may be filed as a supplement or addendum to the rate design proposal, depending on the timing, which the Commission will address by subsequent order addressing a schedule for YB's Emergency Rate Relief Request.

³⁸The Commission offers that these alternatives could include alternative pricing or demand-based options for additional sailings, incorporating every-other-week additional sailings, and any other options that YB decides to analyze and present to resolve this pressing sailing schedule issue.

Consequently, and pursuant to HRS § 271G-17(b) and HAR § 16-605-41(a),³⁹ and subject to the condition that Young Brothers incorporate a robust analysis of the various alternatives to the current adjusted sailing schedule that would both seek to address YB's cost concerns and move towards restoration of the pre-COVID sailing schedule, the Commission approves YB's sailing schedule extension request until August 17, 2020, the date by which YB requests a Commission decision on its Emergency Rate Relief Request.

III.

ORDERS

THE COMMISSION ORDERS:

1. The Commission approves extension of YB's adjusted sailing schedule, as requested in YB's July 6, 2020 Letter, until August 17, 2020, the date by which YB requests a Commission decision on its Emergency Rate Relief Request.

2. In conjunction with its Emergency Rate Relief Request, the Commission directs YB to include in its rate design proposal, a robust analysis of alternatives to the current adjusted sailing schedule that would seek to address YB's cost concerns but

³⁹The Commission notes here the emergency conditions, related to both the COVID-19 Pandemic and YB's current financial situation, under which the July 6, 2020 Letter Request arises.

also move towards restoration of the pre-COVID sailing schedule for the benefit of customers, as discussed above. The deadline for that rate design proposal will be addressed outside of the instant Order in conjunction with the Emergency Rate Relief Request.

DONE at Honolulu, Hawaii JULY 10, 2020.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By James P. Griffin, Chair By Jennifer M. Potter, Commissioner

APPROVED AS TO FORM:

Caroline C. Ishida By Leodoloff R. Asuncion, Jr., Commissioner
Caroline C. Ishida
Commission Counsel

Transmittal No. 20-0003.ljk

CERTIFICATE OF SERVICE

Pursuant to Order No. 37043, the foregoing order was served on the date of filing by electronic mail addressed to the following parties:

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