

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. **37128**
to its Sailing Schedule.)
)
_____)

APPROVAL OF YOUNG BROTHERS'
TEMPORARY, EMERGENCY CHANGES TO ITS SAILING SCHEDULE

By this Order, the Commission approves the requests set forth in Tariff Transmittal No. 20-0003 ("Transmittal" or "Transmittal No. 20-0003"), filed by YOUNG BROTHERS, LLC ("Young Brothers," "YB," or the "Company"), on April 24, 2020, subject to the conditions set forth herein, for a period of thirty (30) days.¹ In doing so, the Commission highlights the exceptional conditions created by COVID-19 under which Young Brothers requests the emergency changes to its sailing schedule, and also notes the public comments and letters the Commission has received regarding this Transmittal.

¹Transmittal 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/>.

I.

BACKGROUND

On April 24, 2020, YB filed its short-notice Transmittal pursuant to Hawaii Administrative Rules ("HAR") §§ 16-601-111 and -112 and §§ 16-605-5, -30, -40, and -41. YB seeks Commission authority to modify its Commission-approved sailing schedules set forth in Local Freight Tariff No. 5-A, 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 Kaumalapau will be modified by changing the one sailing from a Tuesday/Wednesday (Honolulu to Kaumalapau) and Wednesday/Thursday (Kaumalapau to Honolulu) to Saturday/Sunday (Honolulu to Kaumalapau) and Sunday/Sunday (Kaumalapau to Honolulu) sailings.

YB requests that the proposed changes to its sailing schedule become effective on May 5, 2020.

On April 29, 2020 the Consumer Advocate filed its Statement of Position in support of temporary approval of Young Brothers' requested relief, with conditions discussed therein.²

On May 1, 2020, YB filed a response to the Consumer Advocate's Statement of Position.

II.

POSITIONS

A.

Consumer Advocate's Statement of Position

On April 29, 2020, the Consumer Advocate filed its Statement of Position stating that it does not object to YB's requested relief, but recommending certain conditions related to the receipt of information. The Consumer Advocate notes that if the observed decrease in Young Brother's recorded cargo volume and revenues remain unaddressed, "YB losses due to the decreased shipment of cargo in Hawaii will be greater and could affect the long-term viability of YB."³

Importantly, the Consumer Advocate also references Young Brothers' current rate case, which is the subject of

²Transmittal No. 20-0003, "Division of Consumer Advocacy's Statement of Position," filed April 29, 2020 ("CA SOP"), available at: <https://puc.hawaii.gov/main/yb-tariff-transmittal-no-20-0003-for-approval-of-emergency-changes-to-its-sailing-schedule/>.

³CA SOP at 4.

Docket No. 2019-0117, stating that "YB's test year estimates support the need for further inquiry to determine YB's efforts to moderate the magnitude of the rate increase."⁴ The Commission agrees and notes that the currently requested emergency changes to YB's shipping schedule are not intended to be on a permanent basis and are being considered on a temporary basis due to the unique circumstances posed by COVID-19.

The Consumer Advocate acknowledges Young Brothers' contention that the decreases in cargo volume could result in an \$11 million loss of revenues over the remainder of 2020.⁵ While the Consumer Advocate observes that based on these figures the temporary sailing schedule modifications should be approved, it notes that YB should provide additional information for "better context of how the requested relief represents the most reasonable course of action," including:⁶

1. Additional information to better support how the proposed schedule changes correlate to the destination-specific decreases in cargo and why the proposed sailing schedule changes will not result in any cargo being left behind would be useful. Depending on the information provided, there should be discussion and evaluation of whether the capacity of its marine and shoreside equipment is greater than needed and the possible exploration of sales and leasebacks or sales

⁴CA SOP at 5.

⁵CA SOP at 5.

⁶CA SOP at 6.

and leasing of lower capacity assets to help lower YB's capital and O&M costs;

2. Any information discussing the steps Young Brothers has taken or will take to inform customers of the changes, address their concerns, and minimize customer disruptions should be provided; and
3. Information regarding what metrics and benchmarks YB is monitoring and the thresholds that might trigger further changes.⁷

The Consumer Advocate states that this information may be provided after May 5 (YB's requested effective date for Transmittal No. 20-0003).

The Consumer Advocate raises one issue that it stated should be addressed prior to May 5, to clarify YB's requested relief, which is:

(1) whether YB is actually proposing the schedule change between Kaumalapau and Kaunakakai where the barge will leave Kaumalapau on Sunday and arrive at Kaunakakai on Sunday; and (2) since the proposed change to the sailing schedule to Lanai does not involve a decrease in the number of sailings, some explanation in the record to help justify the requested relief.⁸

⁷CA SOP at 5-6.

⁸CA SOP at 7 (noting that "[s]ince the current sailing schedule reflects a departure on Wednesday pm and arrival on Thursday am, it is not clear whether the proposed change is feasible (i.e., departure on Sunday pm and arrival on the same day in the pm). If the current filing reflects an error, it should be corrected as soon as possible." Id. at n.7.)

B.

YB's Response to Consumer Advocate's Position Statement

On May 1, 2020, YB filed a "Response to CA-SOP Immediate Requests."⁹ In its Response, YB states, "YB is actually proposing a scheduling change where a barge will sail from Kaumalapau on Sunday (pm) and arrive at Kaunakakai on Sunday (pm). Under the proposed schedule, cargo would not be available to customers in Kaunakakai until Monday (am)."¹⁰ YB further notes that "[t]his is consistent with the operational timing under YB's current sailing schedule where a barge sails from Kaumalapau on Wednesday (pm) and arrives in Kaunakakai on Wednesday (pm). Under the current schedule, cargo would not be available to customers in Kaunakakai until Thursday (am)."¹¹ However, YB further notes that its existing Local Freight Tariff No. 5-A "currently reflects the time which cargo becomes available to customers in Kaunakakai - Thursday (am) - rather than the time in which the barge arrives in Kaunakakai - Wednesday (pm). Young Brothers will correct this discrepancy going forward."¹²

⁹YB "Response to CA-SOP Immediate Requests," filed on May 1, 2020 ("YB Response").

¹⁰YB Response at 1.

¹¹YB Response at 1.

¹²YB Response at 1-2.

YB further responds to the Consumer Advocate, stating that “[t]he proposed change to the sailing schedule to Kaumalapau, Lanai is necessary to enable the overall reduction in YB’s active tug fleet and associated costs[,]” and that “[b]y shifting the day of the Honolulu - Kaumalapau - Kaunakakai sailing from Tuesday to Saturday, along with the other proposed reductions in sailings, YB is able to cover all proposed regulated sailings to and from Kaunakakai, Kaumalapau, and Hilo with a single tug.”¹³ “This proposed schedule allows YB to cover all 9 regulated sailings with an active fleet of 4 tugs rather than 5. This reduction would allow YB to temporarily reduce labor costs associated with actively crewing an additional tug as well as the labor costs associated with shoreside labor for the additional sailings.”¹⁴

C.

Public Comments

The Commission has received many public comments, as well as letters from Legislators, regarding Transmittal No. 20-0003.¹⁵ Various concerns have been raised, including the

¹³YB Response at 2.

¹⁴YB Response at 2.

¹⁵Public comments are available for viewing at: <https://puc.hawaii.gov/main/yb-tariff-transmittal-no-20-0003-for-approval-of-emergency-changes-to-its-sailing-schedule/>.

inability to receive shipments allowing businesses to bring their products to market, potential delays in receipt of necessary consumer, commercial, or industrial goods, and safety issues that could arise as a result of reduced supply frequency. The Commission has reviewed all of these comments.

II.

DISCUSSION

A.

Legal Standard

Young Brothers cites 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. The Commission finds that it has the authority to grant the requested relief in an expedited manner, pursuant to Hawaii Revised Statutes ("HRS") § 271G-17(b), which states "[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.

B.

Commission's Decision

On April 24, 2020, Governor Ige issued his Sixth Emergency Proclamation, amending and restating all prior COVID-19 related State emergency proclamations to support ongoing State and County responses, until May 31, 2020.¹⁶ The latest Emergency Proclamation extended suspensions on certain laws to enable State and county responses to COVID-19, the implementation of mandatory self-quarantine for all persons entering the State, mandated enhanced social distancing measures, and mandatory self-quarantine for all persons traveling between islands.¹⁷

The Sixth Proclamation acknowledges that the dangers posed by the COVID-19 virus require, "serious attention, effort,

¹⁶"Sixth Supplementary Proclamation Amending and Restating Prior Proclamations and Executive Orders Related to the COVID-19 Emergency," available at: <https://governor.hawaii.gov/wp-content/uploads/2020/04/2004144-ATG-Sixth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf>. ("Sixth Proclamation").

¹⁷All State emergency Proclamations are available at: <https://governor.hawaii.gov/emergency-proclamations/>

and sacrifice of all people in the State to avert unmanageable strains on our healthcare system and other catastrophic impacts to the state[,]” necessitating that the Commission expeditiously proceed with heightened flexibility and caution to safeguard the viability of Hawaii’s core infrastructure.

Relatedly, the Commission sent Young Brothers, LLC a “COVID-19 Financial and Procedural Update Request” on April 24, 2020 (“Update Request”), which was filed in Commission Docket No. 2019-0117, and is available on the Commission’s website (see footnote 1, above).¹⁸ The Update Request asked Young Brothers to file a financial update, informing the Commission of any financial impacts Young Brothers has experienced and predicts it will experience in the near-, medium- and longer-term, as a result of the COVID-19 emergency, in addition to any suggestions or proposals Young Brothers has for financial assistance or relief during this time if it deems necessary, incorporating any relevant references to statutes, administrative rules, or examples from Hawaii or other jurisdictions.¹⁹ YB’s Update pursuant to this request is due to the Commission by May 5, 2020.

¹⁸Letter From: Commission To: J. Ana and J. Ono Re: Docket No. 2019-0117, Young Brothers, LLC, For Approval of a General Rate Increase and Certain Tariff Changes - COVID-19 Financial and Procedural Update Request, Filed April 24, 2020. (“Update Request”).

¹⁹Update Request at 1-2.

As noted above, Transmittal No. 20-0003 was filed on April 24, 2020, and requests that the sailing schedule changes set forth in the Transmittal be permitted to go into effect on May 5, 2020. Young Brothers is requesting these emergency changes to its sailing schedule, "in response to the current COVID-19 pandemic and the rapidly evolving circumstances surrounding YB's operations" which have resulted in a "drastic drop in cargo volumes and revenues."²⁰

Young Brothers emphasized in its Transmittal that cargo volumes have increasingly declined since Governor Ige's March 23, 2020 "State at Home" proclamation.²¹ YB further states that "[f]rom late March to mid-April of 2020, the drop in cargo volumes was approximately 146,000 total revenue tons, or -22.7%, when compared to the prior comparable period ("PCP") in 2019. This reduction in cargo volumes is forecasted to result in an approximately \$11 million loss of revenues over the remainder of 2020."²² The Company states, "[i]n order to reduce costs and maintain its operations amidst these significant declines in cargo volume, Young Brothers is requesting immediate relief to change its weekly sailing schedules to the ports of Kahului, Hilo,

²⁰Transmittal No. 20-0003 at 1.

²¹Transmittal No. 20-0003 at 6.

²²Transmittal No. 20-0003 at 4.

and Kaunakakai, and Kaumalapau.²³ In support of this request, Young Brothers states that the requested changes to Young Brothers' sailing schedule will result in projected savings of "\$6 million (annualized) in operating expenses[.]"²⁴

The Consumer Advocate does not object to YB's request in Transmittal No. 20-0003, given its temporary nature, provided that YB provides certain information, described in Section I.A., above. As noted above, YB has already provided information in response to the Consumer Advocate's more pressing request for information regarding the timing of the sailing from Kaumalapau to Kaunakakai in YB's Response, filed on May 1, 2020.

The Commission has the discretion, for good cause shown, to allow a requested tariff change upon less notice than that otherwise specified in HRS § 271G-17(b) (i.e., after less than forty-five days' notice). As noted above, HAR § 16-605-41(a) also states that "[t]he [C]ommission 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."

²³Transmittal No. 20-0003 at 7.

²⁴Transmittal No. 20-0003 at 8.

Therefore, the Commission finds that an emergency exists in the form of the COVID-19 pandemic as further described in the Governor's Sixth (and prior) Proclamations, and the applicant carrier has proven that a delay in implementing the change or addition will result in substantial damage to the carrier or its shipper.²⁵ HAR § 16-605-41(a) requires that the carrier shall include in its application a full statement of the need for implementing the change or addition. The Commission finds that the information that YB supplied in Transmittal No. 20-0003 and its Response (filed on May 1, 2020) is sufficient to justify its Transmittal No. 20-0003 sailing schedule changes as reasonable for a temporary period of thirty (30) days.

However, the Commission directs YB, by May 22, 2020, to file a report with the Commission (served on the Consumer Advocate) detailing the information that the Consumer Advocate requested in its Statement of Position, specifically:

1. Additional information to better support how the proposed schedule changes correlate to the destination-specific decreases in cargo and why the proposed sailing schedule changes will not result in any cargo being left behind. Depending on the information provided, there should be discussion and evaluation of whether the capacity

²⁵As discussed above, YB has stated that "the reduction in cargo volumes is forecasted to result in an approximately \$11 million loss of revenues over the remainder of 2020" and that YB is requesting these sailing schedule changes to "reduce costs and maintain its operations amidst these significant declines in cargo volume." Transmittal No. 20-0003 at 4, 7.

of its marine and shoreside equipment is greater than needed and the possible exploration of sales and leasebacks or sales and leasing of lower capacity assets to help lower YB's capital and O&M costs;

2. Any information discussing the steps or actions Young Brothers has taken or will take to inform customers of the changes, address their concerns, and minimize customer disruptions; and
3. Information regarding what metrics and benchmarks YB is monitoring and the thresholds that might trigger further changes.²⁶

The Commission will review this information, along with the updated information regarding YB's financial condition filed in Docket No. 2019-0117 (and any additional information the Commission may find necessary to request from YB regarding its financial condition), to determine whether these sailing schedule changes requested in Transmittal No. 20-0003 are justified in continuing beyond the thirty (30) day period established in this Order.

Further, the Commission noted above that YB has stated that its existing Local Freight Tariff No. 5-A "currently reflects the time which cargo becomes available to customers in Kaunakakai - Thursday (am) - rather than the time in which the barge arrives in Kaunakakai- Wednesday (pm). Young Brothers will correct this discrepancy going forward."²⁷ When Young Brothers makes the

²⁶CA SOP at 5-6.

²⁷YB Response at 1-2.

temporary tariff modifications to the sailing schedule requested by Transmittal No. 20-0003, YB shall make clear in Local Freight Tariff No. 5-A when its barge is scheduled to arrive in Kaunakakai, as well as when the barge's cargo will become available to customers.

V.

ORDERS

THE COMMISSION ORDERS:

1. Transmittal No. 20-0003, filed by YB on April 24, 2020, is approved for thirty (30) days, subject to the conditions set forth herein.

2. The Commission directs YB, by May 22, 2020, to file a report with the Commission (served on the Consumer Advocate) detailing the information that the Consumer Advocate requested in its Statement of Position, specifically:

A. Additional information to better support how the proposed schedule changes correlate to the destination-specific decreases in cargo and why the proposed sailing schedule changes will not result in any cargo being left behind. Depending on the information provided, there should be discussion and evaluation of whether the capacity of its marine and shoreside equipment is greater than needed and the possible exploration of sales and leasebacks or sales and leasing of lower capacity assets to help lower YB's capital and O&M costs;

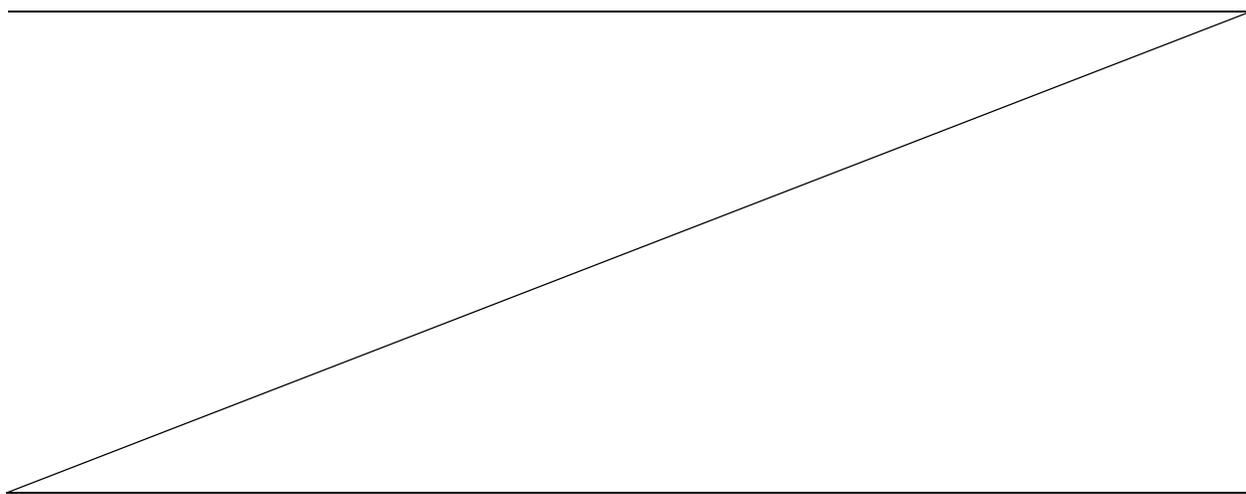
B. Any information discussing the steps or actions Young Brothers has taken or will take to inform customers

of the changes, address their concerns, and minimize customer disruptions; and

C. Information regarding what metrics and benchmarks YB is monitoring and the thresholds that might trigger further changes.²⁸

The Commission will review this information, along with the updated information regarding YB's financial condition filed in Docket No. 2019-0117 (and any additional information it may find necessary to request from YB regarding its financial condition), to determine whether these sailing schedule changes approved pursuant to Transmittal No. 20-0003 are justified in continuing beyond the thirty (30) day period set forth in this Order.

3. Young Brothers is directed, in the course of its temporary tariff modifications made pursuant to Transmittal No. 20-0003, to make clear in Local Freight Tariff No. 5-A when its barge is scheduled to arrive in Kaunakakai,

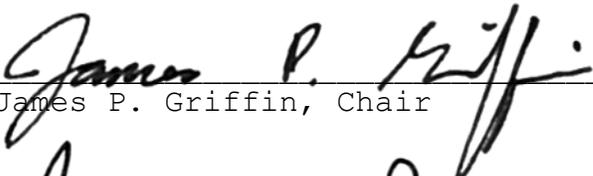


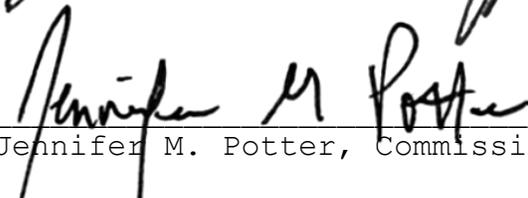
²⁸CA SOP at 5-6.

Molokai, as well as when the barge's cargo will become available to customers.

DONE at Honolulu, Hawaii MAY 4, 2020 .

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
James P. Griffin, Chair

By 
Jennifer M. Potter, Commissioner

By 
Leodoloff R. Asuncion, Jr., Commissioner

APPROVED AS TO FORM:


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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