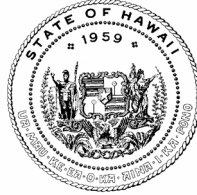


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May 26, 2020

The Honorable Chair and Members of
the Hawaii Public Utilities Commission
Kekuanaoa Building
465 South King Street, 1st Floor
Honolulu, Hawaii 96813

Dear Commissioners:

RE: Young Brothers, LLC and Ongoing Current Events.

The purpose of this letter is to recommend that the Hawaii Public Utilities Commission (“Commission”) consider two actions: 1) suspend the current procedural schedule for the ongoing rate case in Docket No. 2019-0117; and 2) open another proceeding to investigate all relevant facts and measures that might be needed to address Young Brothers, LLC (“YB” or “Company”) current situation and YB’s access to financing. The reasons for these recommendations are discussed below.

The current schedule in Docket No. 2019-0117 should be suspended.

As all are aware, Hawaii is experiencing the same impacts of the ongoing COVID-19 pandemic as the rest of the world and the impact on Hawaii’s economy is affecting all consumers and businesses, including YB and its customers. The Consumer Advocate has concerns with the potential impact that YB’s general rate increase request of approximately \$27 million, or 34%, in Docket No. 2019-0117 will have on Hawaii’s economy during the recovery period from the pandemic but is cognizant of the impact that the pandemic is having on YB as well.

As a result of the Consumer Advocate’s concern, the Consumer Advocate approached YB to initiate early settlement discussions to determine whether Hawaii’s customers could be spared from a significant rate increase that might delay the recovery efforts to restore Hawaii’s economy to levels pre-dating the COVID-19 pandemic. Furthermore, the drastic and evolving economic effects from the COVID-19 pandemic

have most likely rendered the test year projections for YB's expenses and cargo volumes submitted in this proceeding to date moot and no longer useful for determining just and reasonable rates. While it might be argued that the decreases in reported cargo volume and revenues might only further support the need for an even larger increase than 34%, there are other factors that need to be considered. Besides the dynamic situation that is rendering most of the projected cargo volumes moot, there are other factors that should put downward pressures on the need for a rate increase, such as the recently approved reduction in YB's sailing schedule¹ and reduction in gate hours. Continuing to process the current application without reassessing how YB's general rate increase request should proceed would be a serious misallocation of the Commission's and Consumer Advocate's limited resources.

In addition, in the course of discussions with YB, YB has offered that its need for a rate increase cannot be delayed and the need for relief may be exacerbated by YB's ability to access financing beyond the end of May 2020.² Given this information, the Consumer Advocate believes that any relief from a general rate increase may not address YB's situation in a timely fashion. Thus, the Consumer Advocate believes that a separate proceeding should be opened in order to address this situation. This will be discussed in further detail in the next section of this letter. Assuming that the Commission agrees, the Consumer Advocate believes that the parties will need to allocate any resources that would otherwise be spent on the general rate increase to the other measures so that timely solutions can be pursued. Thus, the Consumer Advocate contends that the Commission has the authority to suspend the current procedural schedule for the general rate case under Hawaii Revised Statutes ("HRS") section 271G-17(d)³ and there is ample and good cause for the Consumer Advocate's recommendation because of existing operational concerns and the extraordinary economic circumstances occurring that are exacerbating the effects on YB. The recommended suspension of the general rate increase combined with the separate proceeding that the Consumer Advocate is proposing allows a better focusing of available resources on that separate proceeding and will allow a more efficient evaluation of YB's financial situation, YB's plans to address

¹ In Order No. 37128, filed on May 4, 2020, the Commission approved YB's Transmittal No. 20-0003, which requested a reduction in the sailing schedule between Oahu and certain neighbor islands.

² This is confirmed by YB's disclosures in the letter filed on May 26, 2020 with the Commission, regarding YB's liquidity crisis and potential suspension of operations.

³ The Consumer Advocate is aware that the differences between HRS §§ 269 and 271G includes less flexibility with respect to suspending a request to modify a tariff (where 271G-17(d) sets forth that if action is not taken within six months, the request should be deemed approved) but the Consumer Advocate believes that suspension is within the Commission's authority and that, pursuant to YB's waiver when the proposed procedural schedule was filed with the Commission on February 14, 2020, the need to resolve the general rate case within six months was expressly waived. To be clear, however, the Consumer Advocate is not suggesting that the general rate case should be indefinitely postponed; rather, the Consumer Advocate believes that the need to investigate measures that can be implemented in the near-term will allow the Commission, Consumer Advocate and YB to better assess the optimal manner to proceed with the general rate case.

the situation, and appropriate relief that could be implemented in a more timely manner than through a general rate increase.⁴

The Commission should open a separate investigation to investigate YB's current situation and to explore expedient solutions.

As mentioned above, due to the impacts of COVID-19, economic activity in the State has severely contracted and has impacted all Hawaii businesses and consumers, including the current operations and revenues of YB and, potentially, going into the future.⁵ Young Brothers appears to confirm this conclusion on the impacts to its operations in a letter filed with the Commission on May 5, 2020 in the proceeding.⁶

During the course of its review of YB's financial statements and the review of the supporting detail for YB's general rate increase request in Docket No. 2019-0117, it has become obvious that there are certain revenue requirement elements that bear greater understanding and the impact of these elements on YB's reported income and returns. Furthermore, YB has informally disclosed that its access to financing will be adversely affected at the end of May. Due to these factors, the Consumer Advocate contends that relief through the general rate increase proceeding will be unlikely to timely address any immediate cashflow needs and that measures to address those needs must be urgently explored; this will not be feasible within the context of a general rate increase application and, for the reasons stated above, seeking to continue the general rate increase request and attempting to address more immediate needs does not appear to be a prudent allocation of resources.

⁴ The Consumer Advocate also offers that it considered recommending that, based on the reasons offered to suspend the case, the Commission dismiss YB's application in the rate case. The Consumer Advocate notes, however, that if one of the potential measures that might be considered to address YB's short- or mid-term needs might involve a temporary rate increase, it would be prudent to leave Docket No. 2019-0117 open rather than seeking to approve a temporary rate increase within the context of a separate proceeding. The reason supporting this conclusion relates to the language in HRS §271G-17(e), which provides that,

When a rate increase application is filed, the commission may in its discretion and after public notice, and upon showing by a water carrier of probable entitlement and financial need, authorize temporary increases in rates, fares, and charges;...

Given that the statutory language appears to require public notice and that any temporary increase should occur as part of a rate increase application, Docket No. 2019-0117 would allow more timely temporary relief since it might be concluded that public notice has already occurred.

⁵ See Letter to the Commission dated May 5, 2020 discussing Young Brothers' response to the COVID-19 emergency since March or April 2020 (describing the economic impact of COVID-19 on the operations of Young Brothers over the last few months).

⁶ Letter to the Commission dated May 5, 2020 discussing Young Brothers' response to the COVID-19 emergency since March or April 2020.

As expressed in the Consumer Advocate's Statement of Position filed on April 29, 2020, in response to Transmittal 20-0003, the Consumer Advocate anticipated "that additional information and discussion will be necessary to address YB's financial condition throughout and after the COVID-19 pandemic." The information that YB's access to financing will be adversely affected at the end of May 2020, which is less than a week away, raises significant concerns and highlights the urgency to address this situation. The Consumer Advocate is concerned that, beyond the reduction in sailing schedules already implemented, there may be other YB operational changes that may adversely affect the services offered to consumers.⁷ Thus, it is important to obtain a better understanding of what measures that YB has been considering in a more comprehensive manner instead of receiving proposed measures in a piecemeal fashion. The Consumer Advocate stresses the need to better understand all of the measures that are being considered as well as those that might not have been considered yet in order to find an appropriate balance between YB's and its consumers needs, including measures, for example, that look at changes that are necessary to modify the underlying factors affecting the Company's labor expenses and fixed costs.⁸

Consequently, the Consumer Advocate urges the Commission to consider the Consumer Advocate's recommendation to establish a new proceeding to conduct this investigation so that it can occur in a transparent and timely fashion as opposed to struggling with an ongoing general rate increase application and general opacity of the underlying facts and potential measures to address the situation outside of a proceeding. The focus of this investigation should include, but not be limited to: 1) the facts and circumstances around YB's access to financing; 2) YB's most recent financial statement information and an assessment of the impact of any changes in access to financing might have; and 3) a comprehensive identification of the measures that YB has been exploring and evaluating to address its financial condition and the contingency plans that are being developed to address its situation.⁹ At this time, it should be made clear that the

⁷ YB's letter filed on May 26, 2020, is confirmation that the Consumer Advocate's concerns are warranted as YB has indicated that it intends to restrict its services to customers shipping less than container load shipments.

⁸ In its Order No. 37143 filed in Docket No. 2019-0117 on May 19, 2020, the Commission also raised similar issues and required that YB file a Cost Reduction Plan and Customer Service Mitigation Plan by June 18, 2020. The Commission stated in Order No. 37143 at pages 4-5 that YB's Cost Reduction Plan must address:

(1) structural cost items identified in D&O 36410, that underpin the losses in Column A of the Near-Term Financial Update; (2) all active and prospective plans YB has to seek additional financial assistance; and (3) a near-term action plan to substantially reduce Young Brothers' cost structure embedded in its existing Operating, and General and Administrative Expense Items.

⁹ The Consumer Advocate believes that these contingency plans should outline the possible measures in different categories, such as short-term, mid-term, and long-term measures in terms of the time required to implement those measures. The measures should also be categorized by actions that YB can take: 1) on its own; 2) with assistance or support from its affiliates; and 3) with assistance with assistance or support from its affiliates and outside parties.

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Consumer Advocate is not seeking that YB undertake significant work or to create things that have not yet been created; the Consumer Advocate is proposing that the information, data, and analyses that YB should already have as well as the contingency plans and measures that YB has already developed should be filed with the Commission as soon as possible so that the Commission and Consumer Advocate can better understand what is available. The Consumer Advocate acknowledges that, after the proceeding is opened, additional analyses may be required and contingency plans may be developed but that the immediate focus is having an understanding of the situation and YB's plans. Along those lines, given the understanding that the change in access to financing will occur at the end of May 2020, the Consumer Advocate urges the Commission to require the provision of all available responsive material to the three items identified above by Friday, May 29, 2020,¹⁰ at the latest.

Sincerely yours,

/s/ Dean Nishina
Dean Nishina
Executive Director

DN:lm

cc: Jeffrey Ono and David Nakashima

¹⁰ In its letter, YB has committed to providing information to the Commission by May 29, 2020. So, this recommendation should be deemed reasonable.

FILED

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The foregoing document was electronically filed with the State of Hawaii Public Utilities Commission's Document Management System (DMS).