BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

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| In the Matter of the Application of<br><br>YOUNG BROTHERS, LLC.<br><br>Application for Approval of General Rate Increase and Certain Tariff Changes. | ) | DOCKET NO. 2019-0117 |

ORDER NO. 37280

ADDRESSING YOUNG BROTHERS, LLC'S REQUEST FOR EMERGENCY OR TEMPORARY RATE RELIEF

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ADDRESSING YOUNG BROTHERS, LLC'S REQUEST FOR
EMERGENCY OR TEMPORARY RATE RELIEF

By this Order,[1] the State of Hawaii Public Utilities Commission ("Commission") addresses Young Brothers' Motion for Leave and for Emergency or Temporary Rate Relief, filed on July 7, 2020.[2] The Commission reviews Young Brothers' request for temporary rate relief during an unprecedented and tumultuous time due to the COVID-19 pandemic, but also notes, as it has in a number

[1]The Parties to this proceeding are YOUNG BROTHERS, LLC ("YB", "Young Brothers," or "Company") and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate").

[2]"Young Brother's, LLC's Motion for Leave and for Emergency or Temporary Rate Relief; Memorandum in Support of Motion; Exhibits A-B; Declaration of Jeremiah Ana, Declaration of Christopher Edwards; and Certificate of Service," filed July 7, 2020 (collectively, "Motion for Relief"). The Commission notes that it interchangeably refers to "emergency" and "temporary" relief throughout this Order, but that YB's request for temporary rate relief arises pursuant to Hawaii Revised Statutes ("HRS") § 271G-17(e).

of other recent proceedings, that Young Brothers' financial issues, including rising operating expenses and declining cargo volumes and revenues, began well before the current economic downturn. The Commission must note here that it is compelled to make this decision in an unusually condensed timeframe (i.e., 41 days), under the weight of YB's statements that if YB does not obtain emergency rate relief from the Commission by August 17, 2020, it may discontinue regulated intrastate water carrier service in the State.[3]

It is from this extremely difficult position that the Commission makes the decision to grant YB's temporary rate relief request, set forth in Young Brothers' Motion for Relief, filed July 7, 2020. However, in doing so, the Commission, as discussed further herein, also directs YB to return to its pre-COVID-19 sailing schedule by no later than September 1, 2020. As such, consistent with the terms of this Order, YB is authorized to increase its intrastate revenues by $26,997,928 on an across-the-board basis, which represents an approximate

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[3]YB filed its Motion for Relief on July 7, 2020, and requests Commission decision by August 17, 2020. See Docket No. 2019-0117, Young Brothers' "Notice Regarding Potential Discontinuation of Regulated Intrastate Water Carrier Service of Property in Absence of Necessary Emergency Rate Relief by August 17, 2020 and/or Other Government Funding," filed on July 24, 2020 ("Notice Regarding Potential Discontinuation of Regulated Intrastate Water Carrier Service of Property").

46% increase over intrastate freight revenues at present rates, and an increase of Young Brothers' approved intrastate freight revenue requirement to $87,743,947.[4] In doing so, and in recognition of the clear improvements that YB needs to make to its operations to become viable over the long term that are discussed extensively herein and have been discussed in numerous other forums over the past five months, as well as in prior YB rate case proceedings, the Commission also suspends consideration of any general rate increase request in this docket for twelve (12) months following the date of this Order, as discussed further herein, and imposes the following conditions on YB:

1. In the event Young Brothers and/or any of its immediate and ultimate parent companies determine to discontinue regulated service or terminate water carrier operations in the State of Hawaii, that advanced notice be filed with the Commission. Said notice shall also include actions, and their timeframes, that Young Brothers will take to address the disposition of (1) Young Brothers assets; (2) contracts with external entities; (3) informing customers; and (4) contingency or other measures that would be implemented. The advanced notice shall be submitted to the Commission no less than six months prior to the date that

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[4]See YB Motion for Relief, Exhibit A at 2, line 9. Intrastate freight revenue at current rates is reported as $60,746,019. With a temporary rate increase of $26,997,928, the approved intrastate freight revenue will be $87,743,947.

Young Brothers and/or any of its immediate and ultimate parent companies states that regulated service will be discontinued.

2. The Commission requires that YB file a Customer Service Strategy within three months of the date of this order (i.e., by November 15, 2020). The Customer Service Strategy should include YB's approach to three (3) operational categories: (1) Customer Communications and Outreach, (2) Customer Engagement, and (3) Company Communications. The Customer Service Strategy should provide the basis for Company reforms to existing customer service operations and a timetable for implementation.

3. The Commission's expedited review of Young Brothers' Motion for Temporary Rate Relief has highlighted financial and management practices that appear to contribute significantly to YB's current financial condition and remain a concern to the Commission. The Commission will initiate an audit of Young Brothers' financial and management practices by an independent party. The details on the audit will be forthcoming in a subsequent order.

I.

## BACKGROUND

A.

### Procedural History

The extensive procedural history surrounding Young Brothers' Motion for Relief is discussed below:

On September 25, 2019, Young Brothers filed its Application for a general rate increase.[5]

The Commission held statewide public meetings regarding Young Brothers' general rate increase application from December 2019 through January 2020.[6]

On March 5, 2020, Governor Ige issued an "Emergency Proclamation for COVID-19," to provide relief for disaster damages, losses, and suffering, and to protect the health, safety, and welfare of the people related to the COVID-19 pandemic.[7]

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[5]Young Brother's "Application; Exhibits; Direct Testimonies and Exhibits; Workpapers; Verification; and Certificate of Service," (Volumes I through V), filed on September 25, 2019. The Commission suspended the application for investigation on November 7, 2019. See Order No. 36744, "Suspending Application for Investigation," filed on November 7, 2019.

[6]See "Public Meeting Sign-Up Sheets and Written Testimonies; Docket No. 2019-0117," filed in Docket No. 2019-0117.

[7]"Emergency Proclamation for COVID-19," available at: https://governor.hawaii.gov/wp-content/uploads/2020/03/2003020-GOV-Emergency-Proclamation_COVID-19.pdf. The Governor has issued 11 additional Proclamations since that time related to COVID-19, which are available at: https://governor.hawaii.gov/emergency-proclamations/; see also "Statement from Hawaii Public Utilities

On March 6, 2020, the Commission approved the Parties' Joint Stipulated Procedural Order, as corrected, which established a procedural schedule that ended with a rate case evidentiary hearing scheduled on August 25, 2020.[8]

Young Brothers filed Transmittal No. 20-0003 on April 24, 2020, seeking authority to modify its Commission-approved sailing schedule, stating that because of "a drastic drop in cargo volumes and revenues, YB is seeking to cut costs by reducing the number of weekly sailings . . . ."[9]

On April 27, 2020, the Commission sent a letter to Young Brothers, which was filed in the instant docket, requesting a COVID-19 financial and procedural update, including information on any procedural changes that YB anticipates it may request

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Commission on COVID-19 Emergency," dated March 24, 2020, available at: https://puc.hawaii.gov/wp-content/uploads/2020/03/Statement-from-Hawaii-Public-Utilities-Commission-on-COVID_3-24-2020.pdf.

[8]Order No. 37030, "Granting Parties' Joint Motion for Enlargement of Time and Approving, as Corrected, the Parties' Joint Stipulated Procedural Order," filed on March 6, 2020.

[9]Transmittal No. 20-003; Exhibit 1; Verification; and Certificate of Service, filed April 24, 2020 ("Transmittal No. 20-0003"), available at: https://puc.hawaii.gov/wp-content/uploads/2020/04/Young-Brothers.Trans-No.-20-0003.pdf https://puc.hawaii.gov/wpcontent/, at 1.

related to the instant docket in light of the COVID-19 emergency situation,[10] to which Young Brothers replied on May 5, 2020.[11]

On May 26, 2020, Young Brothers filed a letter with the Commission entitled "Notice Regarding Young Brother['s] Liquidity Crisis and Potential Suspension of Operations," which stated that Young Brothers' financial situation was "extremely dire," and stating that "unless immediate relief is obtained from the State of Hawaii [] (e.g., CARES Act funding), Young Brothers will face a cash shortfall very shortly."[12] Young Brothers also stated that it had been recently informed that "additional infusions of cash" from its parent company would "not be available after

[10]Letter from the Commission to Jeremiah Ana, Jeffery Ono, and David Nakashima – COVID-19 Financial and Procedural Update Request, filed on April 24, 2020.

[11]Letter from Jeremiah Ana to Commission – Response to COVID-19 Financial and Procedural Update Request, filed on May 5, 2020 (noting "drastic losses in cargo volume as a result of the COVID-19 emergency," at 1, and that "[t]o the extent necessary and required, Young Brothers is willing to update the 2020TY revenue requirement in light of the pandemic recession and work with the Consumer Advocate in revising the rate case procedural schedule." Id. at 5.).

[12]"Notice Regarding Young Brothers, LLC's [] Liquidity Crisis and Potential Suspension of Operations," filed on May 26, 2020 ("YB May 26 Letter"), available at: https://puc.hawaii.gov/wp-content/uploads/2020/05/YB-Letter-to-PUC-05.26.2020.pdf, at 1. The "CARES Act" refers to the federal Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, which was signed into law on March 27, 2020, and which provided federal funding to states to aid in the states' coronavirus response efforts.

May 31, 2020."[13] At that time, YB stated that it intended to file with the Commission:

(1) A business plan laying out YB's financial strategy to continue operating under scenarios in which YB receives immediate, significant CARES funds, delayed receipt of CARES funds, and no CARES funds, on Friday, May 29, 2020;[14]

(2) A tariff transmittal requesting approval to suspend Less than Container Load/mix cargo shipments, with the exception of Molokai/Lanai and livestock, by May 29, 2020;[15]

(3) A request for cost deferral accounting for COVID-19 pandemic related costs and lost revenues, at an unspecified date;[16]

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[13]YB May 26 Letter at 1. In this Letter, YB also announced that it intended to file "on or about Friday, May 26, 2020, a tariff transmittal requesting approval to suspend LCL/mix (Less than Container Load) with the exception of Molokai/Lanai and livestock[,]" because "in order to achieve immediate and significant cost savings, [YB] must suspend a very labor intensive part of our business – shipping goods that do not fill a container." Id. at 1-2.

[14]This was subsequently filed on May 29, 2020 in Docket No. 2020-0084 (see below).

[15]The Commission received a variety of public comments on this when it was announced, available at: https://puc.hawaii.gov/main/young-brothers-and-consumer-advocate-file-letters-with-the-commission-regarding-young-brothers-financial-situation/.

[16]This request was subsequently filed as a separate application and assigned to Docket No. 2020-0104. See Docket No. 2020-0104, "Application for Approval to Defer Costs and Accrue Lost Gross Margins Associated with the COVID-19 Pandemic Emergency," filed on July 16, 2020.

(4) A request for emergency/temporary rate relief, at an unspecified date;[17] and

(5) A request for extension of its temporary sailing schedule changes that were originally the subject of YB Transmittal No. 20-0003.[18]

Also on May 26, 2020, the Consumer Advocate filed a letter with the Commission, recommending that the Commission consider two actions:[19]

(1) Suspending the current procedural schedule for the Docket No. 2019-0117 rate case; and

(2) Opening another proceeding to investigate all relevant facts and measures that might be needed to address YB's current situation and YB's access to financing.

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[17]This temporary rate relief request was subsequently filed with the Commission in the instant docket on July 7, 2020, as discussed throughout this Order.

[18]Requests to extend the adjusted sailing schedule were filed with the Commission on May 28, 2020, June 3, 2020 (request to further modify adjusted schedule), and July 6, 2020 (request to extend further modified adjusted schedule), available at: https://puc.hawaii.gov/main/yb-tariff-transmittal-no-20-0003-for-approval-of-emergency-changes-to-its-sailing-schedule/. The Commission has received numerous public comments on YB's changes to its sailing schedule, to-date, which are available at the link listed above. The current, adjusted sailing schedule is available at: http://htbyb.com/wp-content/uploads/Cargo-Delivery-and-Availability-Information-Sheet-as-of-06.2020-All-Islands-WEB2.pdf.

[19]Consumer Advocate's Letter regarding "Young Brothers, LLC and Ongoing Current Events," filed on May 26, 2020 ("CA May 26 Letter"), at 1, available at: https://puc.hawaii.gov/wp-content/uploads/2020/05/YOUNG-BROTHERS.Ongoing-Current-Events.2020-05-26.pdf.

On May 28, 2020, YB filed a response with the Commission stating that generally, it "has no objection to the Commission suspending the procedural schedule in YB['s] ongoing rate case in Docket No. 2019-0117, but recommends that the suspension be for a period of 60 days at which time the Commission should reconsider whether to continue the suspension order or order the parties to agree to a new procedural schedule."[20]

On June 2, 2020, the Commission opened Docket No. 2020-0084, the Commission's emergency investigation into YB's financial condition, to assist Young Brothers in developing solutions to address its current financial condition, including examining identified requests for relief that have been filed and may be filed in the future with the Commission.[21] The Commission also included a discussion of YB's past rate cases, and noted that

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[20]"Young Brothers Response to the Division of Consumer Advocacy's May 26, 2020 Letter Concerning Young Brothers, LLC and Ongoing Current Events," filed on May 28, 2020 ("YB May 28 Response"), at 1, available at: https://puc.hawaii.gov/main/young-brothers-and-consumer-advocate-file-letters-with-the-commission-regarding-young-brothers-financial-situation/.

[21]Docket No. 2020-0084, Order No. 37161, "Instituting an Emergency Investigative Proceeding Regarding Young Brothers, LLC's Financial Condition," filed on June 2, 2020 ("Order No. 37161"). The Parties to that docket are the Young Brothers and the Consumer Advocate. The Commission notes that it originally opened Docket No. 2020-0084 via Order No. 37156, filed on June 1, 2020, but because of inadvertent errors in the table on page 5 of Order No. 37156, the Commission voided it via Order No. 37160, and subsequently filed Order No. 37161.

YB's financial issues started well before the COVID-19 pandemic. The Commission also filed YB's Letter providing information regarding YB's access to financing, financial impact, and contingency plans in Docket No. 2020-0084.[22]

On June 10, 2020, the Commission convened a virtual Status Conference via WebEx in Docket No. 2020-0084, which was also live-streamed for public viewing via YouTube, to provide the opportunity for Young Brothers to present on its current access to financing and its contingency plans given its announced liquidity crisis.[23] During this Status Conference, YB stated that despite the announcement in the May 29 Letter that it was going to seek to suspend Less than Container Load/mix cargo shipments, with the exception of Molokai/Lanai and livestock, that, in fact, "Young Brothers would no longer seek temporary suspension of less than containerload cargo."[24] Young Brothers' June 10 Status

[22]Docket No. 2020-0084, "Requested Information Regarding Young Brothers, LLC's Access to Financing, Financial Impact, and Contingency Plans," filed on May 29, 2020 ("May 29 Letter"). YB laid out three scenarios in the May 29 Letter: (1) immediate receipt of significant CARES Act funding; (2) delayed receipt of CARES Act funding; and (3) no CARES Act funding available. Id. at 5.

[23]See Notice of Status Conference on Wednesday, June 10, 2020, filed in Docket No. 2020-0084; Docket No. 2020-0084, Young Brother's Presentation "Docket No. 2020-0084: Public Utilities Commission Status Conference Re: Young Brothers' Emergency Investigative Proceeding," filed on June 10, 2020 ("YB June 10 Status Conference Presentation").

[24]YB June 10 Status Conference Presentation at 13.

Conference Presentation concluded by highlighting YB's perceived need for "Immediate cash funding; Immediate rate relief; and Operational flexibility."[25]

The Hawaii State Legislature convened from June 22 through July 10, 2020, during which time the Governor and the Legislature considered Young Brothers' request for $25 million in CARES Act funding "to sustain operations through December 2020."[26]

On July 7, 2020, Young Brothers filed its Motion for Relief with the Commission, seeking an emergency or temporary rate increase.

The Legislative Session closed on July 10, 2020. In its Motion for Relief, YB noted that "as of July 6, 2020, YB has not received any notice or other indication that the Legislature or the Governor will approve any CARES Act funding to YB in the near future."[27] The Commission is not in receipt of any additional information indicating that YB will receive any CARES Act or other government funding. However, the Legislature did pass Senate Resolution No. 125, S.D. 1 ("Senate Resolution No. 125"), "Requesting the Department of Transportation to Provide Funding to Water Carriers for the Purpose of Providing Financial Assistance

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[25]YB June 10 Status Conference Presentation at 21.

[26]May 29 Letter at 5.

[27]Motion for Relief at 12.

to Maintain Routes and Lines of Services Within the State and to Convene a Working Group to Recommend Mid- and Long-Term Solutions to Ensure Continuous Water Carrier Service Throughout the State." Senate Resolution No. 125 directs the Commission, in collaboration with the Division of Consumer Advocacy, and any interisland water carriers operating in the State, to convene a working group on or before August 1, 2020. Senate Resolution No. 125 also states that:

> [I]t is in the public interest for the State to provide subsidies to interisland cargo carriers to offset the costs incurred by those carriers as a result of providing cargo carrier services to ports serving counties within the State having a population of less than five hundred thousand, and to address the impacts of the COVID-19 pandemic and to ensure the continued operations of an interisland tug and barge service to advance the State's economic recovery from the COVID-19 pandemic's statewide economic effects.[28]

On July 10, 2020, the Commission filed Order No. 37211, which extended Young Brothers' adjusted sailing schedule through August 17, 2020, on 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

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[28]As of the date of this Order, YB has not informed the Commission that it expects to receive any funding from any County pursuant to this Resolution. Given the importance of the Commission's consideration of the availability of any outside funding to its assessment of YB's temporary rate increase request, the Commission makes this decision under the assumption that YB does not anticipate receiving such funding.

cost concerns and move towards restoration of the pre-COVID sailing schedule[.]"[29]

On July 16, 2020, the Commission issued Order No. 37227, which: (1) unsuspended the instant docket (i.e., Docket No. 2019-0117) for the limited purpose of addressing Young Brothers' Motion for Relief, and (2) granted the Consumer Advocate's request for additional time to file a response to Young Brothers' Motion for Relief.[30]

On July 17, 2020, Young Brothers filed a Supplemental Memorandum in this docket in support of its Motion for Relief.[31]

On July 23, 2020, the Consumer Advocate filed a response to Young Brothers' Motion for Relief.[32]

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[29]Transmittal No. 20-0003 (Non_Docket), Order No. 37211, "Approving a Conditional Extension of Young Brothers' Adjusted Sailing Schedule," filed on July 10, 2020.

[30]Order No. 37227, "Addressing Young Brothers, LLC's Motion for Leave, and Granting the Consumer Advocate's Motion for Enlargement of Time," filed July 16, 2020 ("Order No. 37227").

[31]"Supplemental Memorandum in Further Support of Young Brothers, LLC's Motion for Leave and for Emergency or Temporary Rate Relief, Filed July 7, 2020; Attachment A; Attachments 1 -3; and Certificate of Service," filed July 17 2020 ("YB Supplemental Memo").

[32]"Division of Consumer Advocacy's Response to Young Brothers, LLC's Motion for Leave and for Emergency or Temporary Relief," filed July 23, 2020 ("CA Response")

On July 24, 2020, YB filed its Notice Regarding Potential Discontinuation of Regulated Intrastate Water Carrier Service with the Commission.

On July 30, 2020, the Commission issued Order No. 37247, which further lifted the suspension on this docket for the purposes of granting Young Brothers' request to hold an evidentiary hearing on its Motion for Relief.[33]

Also on July 30, 2020, the Commission issued a Notice of Evidentiary Hearing, which set the hearing on Young Brothers' Motion for Relief for August 14, 2020.[34]

On July 31, 2020, the Commission issued Procedural Order No. 37250, which, in pertinent part, established a procedural schedule to govern the process concluding with the evidentiary hearing on Young Brothers' Motion for Relief.

On July 31, 2020, Young Brothers filed a motion for leave to file a reply to the Consumer Advocate's Response.[35]

[33]Order No. 37247, "Lifting Docket Suspension, Granting Young Brothers, LLC's Motion for Leave, and Directing Young Brothers, LLC to File Tariff Sheets in the Instant Docket," filed July 30, 2020 ("Order No. 37247").

[34]"Notice of Evidentiary Hearing," filed on July 30, 2020.

[35]"Young Brothers, LLC's Motion for Leave to File a Reply to the Division of Consumer Advocacy's Response to the Motion for Emergency or Temporary Rate Relief, Filed on July 23, 2020; Exhibit A; and Certificate of Service," filed July 31, 2020 ("Motion for Leave").

Also on July 31, 2020, the Commission virtually convened the first meeting of the PUC Water Carriers Working Group via WebEx, as requested in Senate Resolution No. 125, S.D.1.

On August 3, 2020, Young Brothers filed "its proposed tariff sheets consistent with the requests set forth in its Motion for Emergency/Temporary Rate Relief and Supplemental Memorandum."[36]

On August 4 and 5, 2020, the Commission held informal status conferences with the Parties, via WebEx, to discuss some procedural logistics and considerations for the evidentiary hearing.

On August 5, 2020, YB filed a "Request for Further Extension of Adjusted Sailing Schedule; Potential Alternative Sailing Schedules," which set forth YB's request to extend the existing adjusted sailing schedule, but also proposed three alternative sailing schedules for the Commission's consideration.[37]

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[36]Letter from YB to Commission re Docket No. 2019-0117 - Application for Approval of General Rate Increase and Certain Tariff Changes; Proposed Tariff Sheets, filed August 3, 2020 ("YB Proposed Tariff Sheets"), at 1.

[37]"Tariff Transmittal No. 20-0003 - Application of Young Brothers, LLC for Approval of Emergency Changes to its Sailing Schedule - Request for Further Extension of Adjusted Sailing Schedule; Potential Alternative Sailing Schedules," filed on August 5, 2020, available at: https://puc.hawaii.gov/wp-content/uploads/2020/08/Young-Brothers-LLC.Transmittal-No.-20-0003.-1-of-2_8-5-2020.pdf). Pursuant to Order No. 37262, filed on August 7, 2020, the Commission directed YB to file its Potential Alternative Sailing Schedules unredacted, which YB did on August 10, 2020, available at: https://puc.hawaii.gov/wp-

On August 6, 2020, the Commission issued Order No. 37258, which granted YB's motion for leave filed on July 31, 2020, and made amendments to Procedural Order No. 37250 as a result of the informal discussions with the Parties regarding various procedural issues for the evidentiary hearing.[38]

Between August 7, 2020, and August 12, 2020, the Parties filed their witness and hearing exhibits lists with the Commission, pursuant to Order No. 37258.[39]

On August 11, 2020, the Commission issued PUC-YB-IR-119, requesting that YB file a rate design utilizing an across-the-board percentage increase to YB's intrastate service rates, to which YB responded on August 12, 2020.

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content/uploads/2020/04/Young-Brothers-LLC.Transmittal-No.-20-0003_8-10-2020.pdf.

[38]Order No. 37258, "Granting Young Brothers, LLC's Motion for Leave to File a Reply and Amending Procedural Order No. 37250," filed on August 6, 2020 ("Order No. 37258").

[39]Young Brothers LLC's Witness and Exhibit Lists," filed on August 7, 2020; "Division of Consumer Advocacy's Final Naming of Witnesses Responsible for Certain Sections Presented in the Division of Consumer Advocacy's Response to Young Brothers, LLC's Motion for Leave and for Emergency or Temporary Rate Relief, Filed on July 23, 2020," filed on August 10, 2020; "Division of Consumer Advocacy's Final List of Witnesses and Hearing Exhibits for Evidentiary Hearing Convened on August 14, 2020," filed on August 11, 2020; and "Young Brothers, LLC's Identification of Witnesses Sponsoring Testimony Reflected in Briefing on Motion for Leave and for Emergency or Temporary Rate Relief," filed on August 12, 2020.

The Commission held a Prehearing Conference on August 13, 2020, during which the Parties discussed procedural matters for the evidentiary hearing, and so that the Commission could assist the Parties with troubleshooting any issues with WebEx in advance of the hearing. The Commission held a further WebEx orientation session with the Parties on August 13, 2020, following the Prehearing Conference.

The Commission issued Prehearing Conference Order No. 37276 on August 13, 2020.

The Commission held a virtual evidentiary hearing via WebEx on YB's Motion for Relief (i.e., request for temporary rate increase) on August 14, 2020 ("Evidentiary Hearing").[40]

1.

YB's Motion for Relief and Supplement

In its Motion for Relief, Young Brothers requests "an emergency or temporary rate increase to mitigate Young Brothers' current liquidity crisis and assist the Company to continue its intrastate water carrier of property operations and services until

[40]The recording of the evidentiary hearing is available at: https://www.youtube.com/watch?v=3s3AaPbIWsg&feature=youtu.be. The Commission will send the recording of the evidentiary hearing to a court reporter for transcription.

final rate relief is granted herein."[41] YB discusses the extensive procedural history surrounding its Motion for Relief, noting the procedural events to-date associated with its general rate increase request in Docket No. 2019-0117, the COVID-19 pandemic, and its requested adjustments to its sailing schedule in Transmittal No. 20-0003.[42]

Young Brothers then goes on to describe its current "liquidity crisis," noting that it has experienced a decrease in cargo volumes due to the COVID-19 pandemic, but that its costs remain largely fixed.[43] YB also states that "[h]aving covered more than $21 million in losses for YB from 2018 and 2019, YB's parent company [(i.e., Saltchuk Resources, LLC ("Saltchuk")] informed YB that it can no longer afford to provide Young Brothers with the cash infusions necessary to cover the net operating losses without adequate and immediate rate relief, particularly in the COVID-19 economic environment."[44]

YB requests temporary rate relief pursuant to HRS § 271G-17(e), which states that "[w]hen a rate increase application is filed, the commission may in its discretion and

[41]Motion for Relief at 1.

[42]Motion for Relief at 2-10.

[43]Motion for Relief at 11.

[44]Motion for Relief at 11.

after public notice, and upon showing by a water carrier of probable entitlement and financial need, authorize temporary increases in rates, fares, and charges . . . ."[45] YB states that:

> Under HRS § 271G-17(e), YB need only show probable entitlement (i.e., show that it is more likely than not entitled to relief) and financial need in order to qualify for a temporary rate increase. As discussed above, without this temporary rate increase, YB will not be able to continue operations because the present tariff rates are non-compensatory and do not, at a minimum, provide sufficient working capital to pay for the Company's operating expenses and taxes.[46]

YB states that it seeks an "emergency or temporary rate increase of $30,418,706, which represents the amount forecasted for YB to 'break even' for its intrastate operations[,]"[47] although it also notes that "the Commission is precluded from considering a rate increase in excess of $26,997,928" because "[a]s a result of notices to the public, the total amount Young Brothers may receive is restricted to the total amount requested in its [general rate case] application."[48] In its Motion for Relief, YB states that:

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[45]Motion for Relief at 14-15. YB cites to past Commission Docket Nos. 2008-0115 (In re Molokai Public Utilities, Inc.) and 2008-0133 (In re Sea Link of Hawaii, Inc.) in support of its Motion for Relief.

[46]Motion for Relief at 17.

[47]Motion for Relief at 18.

[48]Motion for Relief at 18 n.64. YB later clarifies that the temporary rate increase it seeks via its Motion for Relief is $26,997,928. YB Reply at 13.

> [t]he $30,418,706 is based on the revenue requirement for the 2020 Test Year, adjusted for known and documented changes that are expected to reflect YB's on-going normal operations. In other words, YB is seeking an emergency or temporary rate increase to only cover its normalized operating expenses and taxes for its intrastate operations . . . YB is requesting that any decision on YB's capital structure and associated cost and average rate base for the 2020 Test Year and the additional revenues required to provide a reasonable return on rate base be deferred to the request for permanent rate relief in this docket.[49]

Operating Losses: YB states that it had previously projected an operating loss before interest and income taxes of $13,356,335 on a total company basis, of which $16,731,142 is for the intrastate operations at YB’s present authorized tariff rates, but that its near-term financial forecasts from April and May 2020 show total company losses before interest and income taxes of $22,539,542, and $24,816,411, respectively.[50] YB cites to “two primary reasons for the intrastate operating losses that have been reported in 2019 through 2020 to-date and are expected to be incurred beyond . . . “(1) the decline in the intrastate cargo volumes from the cargo volumes that were expected to be transported in the Test Year 2018 (i.e., the volumes upon which the current effective rates are based); and (2) the higher operating expenses due primarily to the increase in labor and labor related costs.”[51]

[49]Motion for Relief at 18.

[50]Motion for Relief at 18-19, n.65.

[51]Motion for Relief at 20.

Intrastate Cargo Tonnage and Revenues at Present Rates: YB notes a steady decrease in its intrastate cargo volumes, "resulting in lower intrastate revenues than the 2018 Test Year revenue requirement and current effective rates approved by the Commission in Decision and Order No. 36140, filed on February 1, 2019 []."[52] It states that the COVID-19 pandemic has resulted in "a further decline in the intrastate cargo tonnage to be transported by YB for the 2020 Test Year[,]" and that the "decline in cargo tonnage transported by YB since 2018 are due to factors that are not within [YB's] control."[53]

Operating Expenses: YB states that its operating expenses are "primarily fixed – the expenses do not vary in proportion to the cargo tonnage transported by the Company."[54] YB states that "approximately 94% of Young Brothers' operating expenses represent the costs of receiving, loading, transporting, and discharging cargo between the seven ports in the State[,]" but that the labor and labor-related costs for its 374 employees recorded for purposes of the 2020 Test Year "comprise approximately 59% of YB's total company operating expenses for the transport of

[52]Motion for Relief at 21.

[53]Motion for Relief at 21-22.

[54]Motion for Relief at 22.

cargo."[55] YB states that the increase in labor and labor-related costs for both YB's terminal operations and its marine operations are "primarily due to the increases set forth in the various collective bargaining contracts that cover the employees responsible for the terminal operations[,]"[56] but that the increases in labor costs are not the result of an increase in the number of employees performing either the cargo handling or voyage activities, "as the total employee count has remained relatively stable since 2017."[57] Young Brothers also states that it has reduced its non-labor costs.[58]

Implementation of the Requested Temporary Rate Increase: YB states that "[t]emporary or interim rate increases have generally been implemented as an across the board percentage that is applied to [a] utility's present tariff rates[,]" but YB argues that this "would not be practical for [YB] because the present rates for various commodities transported by [YB] do not presently reflect the cost of transporting the various commodities."[59] As

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[55]Motion for Relief at 22-23. YB defines "labor and labor-related costs" as "direct labor, payroll taxes, and benefits." Id. at 23.

[56]Motion for Relief at 23-24 (citing to general rate case testimony of Chris Martin and Michael McDonald).

[57]Motion for Relief at 23-24 (emphasis added).

[58]Motion for Relief at 25.

[59]Motion for Relief at 27.

such, on July 17, 2020, YB filed its Supplemental Memo, proposing a rate design for its requested temporary increase.

YB's Supplemental Memo proposes a rate design that "is based upon increased revenues sufficient to, at least in the short-term, return to its full sailing schedule. In other words, the $30,418,706 revenue increase was predicated on the Company's pre-COVID-19 sailing schedule."[60] YB, while recognizing that "the Commission is precluded from considering a rate increase in excess of $26,997,928[,]" states that if that rate increase was applied equally to all rates, "an additional $26,997,928 in revenues would result in a 46% increase across all commodities."[61] However, YB also argues that this type of across-the-board increase would "further exacerbate existing rate imbalances and add to unsustainable cross-subsidies, both of which endanger the Company's short-term and long-term viability."[62] YB also argues that:

> [T]he existing rate structure fails to adequately recognize notable cost differences incurred by the Company to transport cargo between the various island ports it currently serves throughout the State. For

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[60]Supplemental Memo at 2.

[61]Supplemental Memo at 3.

[62]Supplemental Memo at 3. YB provides the example of its "Less than Container Load" cargo, stating that "these non- standardized products (i.e., mixed cargo and pallets) require substantial cargo-handling costs for the Company - costs that are not effectively and currently recovered in existing rates." Id. at 4.

example, barge trips to the Hilo port cost the Company approximately double the amount of fuel, employee time, and asset utilization (e.g., barges and tugs) than do sailings to either the Kahului or Nawiliwili ports, yet existing rates for the transport of a majority of the Company's products do not differ between these ports.[63]

YB also notes that its proposed rate design "does not employ an explicit price elasticity offset" and "for the sake of expediency, the price increases proposed [in its rate design] ignore likely price elasticity effects, thereby assuming that a $1 increase in price will result in $1 of additional revenue, even though the Company recognizes that will almost certainly not be the case."[64]

2.

Consumer Advocate's Response to YB's Motion for Relief

On July 23, 2020, pursuant to Order No. 37227[65] the Consumer Advocate filed its Response to Young Brothers' Motion. In its Response, the Consumer Advocate opposed the temporary rate increase request in Young Brothers' Motion for Relief for the following reasons: (1) Young Brothers' ratepayers are currently

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[63]Supplemental Memo at 4. YB's Attachment 1 to its Supplemental Memo contains its Overall Rate Design Proposal (by port) and includes the % increase for the various types of cargo (which equals a 100% price increase for certain types of LCL cargo).

[64]Supplemental Memo at 6-7.

[65]See Order No. 37227.

struggling as a result of the COVID-19 pandemic and resulting economic conditions; (2) Young Brothers' Motion for Relief is procedurally flawed; and (3) Young Brothers' fails to make an adequate showing of probable entitlement in its Motion for Relief.

First, the Consumer Advocate maintains that Young Brothers' reliance on the ongoing COVID-19 pandemic, and related economic impacts, as a basis for its emergency or temporary rate increase "appears somewhat oblivious to the fact that its customers are also feeling the effects of the pandemic and resulting economic fallout," and will be further impacted by YB's proposed rate increase.[66]

The Consumer Advocate notes that Young Brothers' requested emergency or temporary rate relief of $30,418,706 represents a 46.76% increase over revenues for YB's present rates, "but Young Brothers fails to address or even acknowledge how their highly objectionable revenue increase affects consumers who are struggling to make ends meet under an indescribable situation now presented to the broader community."[67] Concomitantly, "[t]he Consumer Advocate encourages the Commission to fully consider the reality that ratepayers and the community are not in a position to

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[66]CA Response at 4.

[67]CA Response at 6-7.

absorb and pay for the emergency/temporary rate increase sought by Young Brothers at this time."[68]

The Consumer Advocate clarifies that it "stands ready to work with [Young Brothers] and the Commission to address Young Brothers' unique financial and operational challenges," but that the requested emergency or temporary rate relief "is not the appropriate way forward at this time, with the interests of the consumer and the State's economy in mind."[69] The Consumer Advocate suggests that YB has not "explored all of its options" such as "explor[ing] its access to capital from commercial markets[,]" nor has it adequately demonstrated why its parent company, Saltchuk, "could not continue to support YB's business through the completion of the rate case or at least provide loan guarantees to enable YB to obtain its own financing."[70] The Consumer Advocate also suggests that Young Brothers could explore selling assets that are oversized or unnecessary to reduce its fixed costs.[71]

Second, the Consumer Advocate maintains that YB's Motion for Relief is procedurally flawed. The Consumer Advocate notes that YB's proposed emergency or temporary rate relief amount

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[68]CA Response at 7.

[69]CA Response at 8.

[70]CA Response at 8-9.

[71]CA Response at 9.

exceeds the rate increase initially proposed in YB's general rate increase application filed earlier in this docket.[72] Referring to prior Commission rate case decisions, the Consumer Advocate contends that this constitutes an improper attempt to amend its proposed tariff filing, as initially submitted in its initial rate case Application.[73]

Additionally, the Consumer Advocate observes that YB's Motion for Relief does not include any rate design or tariff sheets reflecting the proposed rate relief, as required by HAR § 16-605-30.[74] As a result, the Consumer Advocate states that "it is impossible for customers to understand the specific prices they are now being asked by [Young Brothers] to pay on an emergency/temporary basis."[75] The Consumer Advocate provides a table on page 17 of its Response to illustrate some of the impacts of YB's proposed emergency or temporary rate increase on customer rates to underscore the importance of transparency for customers

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[72]See CA Response at 12 (observing that in YB's Application, filed September 25, 2019, YB requested a rate increase of $26,997,928, compared to the $30,418,706 YB now requests in its Motion).

[73]CA Response as 12. See also, id. At 14-15.

[74]CA Response at 15.

[75]CA Response at 17. The Commission subsequently directed YB to file proposed tariff sheets in the instant docket pursuant to HAR § 16-605-30.

and regulators in examining YB's Motion.[76] The Consumer Advocate further observes that the rate design proposed by YB in its Supplemental Memorandum "greatly exceeds the already excessive increases proposed by the Company months ago in its general rate case filing . . . ."[77]

Third, the Consumer Advocate argues that YB has failed to meet its burden of demonstrating financial need or probable entitlement. Specifically, the Consumer Advocate suggests that many of the problems described in Young Brothers' Motion for Relief "should be attributed to [YB's] management rather than to its customers or the COVID-19 pandemic."[78] Accordingly, "the Consumer Advocate anticipates recommending substantial downward adjustments to [YB's] forecasted operating expenses, depreciation expenses and income taxes, as well as major adjustments to the proposed jurisdictional allocations of costs between interstate and intrastate operations when its evidence is submitted."[79]

For example, the Consumer Advocate observes that "Young Brothers' operating costs have been spiraling upward long

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[76]See CA Response at 17 (noting that rates for certain types of cargo to Hilo would increase by 30-100% under YB's proposed emergency or temporary rate increase).

[77]CA Response at 17.

[78]CA Response at 18.

[79]CA Response at 18.

before the pandemic and resulting economy, even though [YB's] total revenues have not been growing[.]"[80] Additionally, the Consumer Advocate notes that YB's proposed intrastate rate base has significantly increased to $82.8 million in this docket, a more than doubling of its invested capital from its last rate case, in which YB and the Consumer Advocate stipulated to $37,916,258 in intrastate rate base.[81] The Consumer Advocate contends that "the substantial investment of new capital into the business, in the face of declining cargo volume and revenues, has undoubtedly contributed to [YB's] alleged financial emergency."[82]

Furthermore, the Consumer Advocate suggests that without more significant efforts to stabilize Young Brothers' finances and improve its long-term competitive position, an emergency or temporary rate increase will burden customers without meaningfully addressing YB's underlying financial issues.[83] In this regard, the Consumer Advocate refers to historical data, pre-COVID-19, which indicates that Young Brothers "has failed to manage its costs and investments within the agreed upon rate case outcomes [(referring

[80]CA Response at 18.

[81]CA Response at 19 (referring to Docket No. 2017-0363).

[82]CA Response at 19.

[83]See CA Response at 20-21.

to YB's 2016 test year and 2018 test year rate cases)]."[84] Bearing this regulatory history in mind, the Consumer Advocate states that YB's present request for emergency or temporary rate relief "is simply not credible."[85]

The Consumer Advocate also maintains that responsibility for YB's present financial difficulties should be borne, in part, by YB's parent company, Saltchuk. In particular, the Consumer Advocate refers to Saltchuk's abrupt decision to cease contributing revenue to YB to help cover YB's operating losses.[86] Noting the unilateral nature of Saltchuk's termination, the Consumer Advocate argues that "there is no evidence that steps were taken by Saltchuk to provide YB the tools it might need to address the parent's sudden termination of cash infusions before this decision was made."[87] For Saltchuk to suddenly decline to provide financial support and rely on YB's customers to make up this deficit is improper, the Consumer Advocate argues, considering: (1) Saltchuk has failed to capitalize YB with a reasonably balanced capital structure; (2) Saltchuk has captured and monetized the benefits of YB's tax deductions and credits

[84]CA Response at 20.

[85]CA Response at 22.

[86]CA Response at 23.

[87]CA Response at 23.

arising from ratepayer-funded assets; (3) Saltchuk has arranged for its affiliates to provide services to YB on terms that are not always advantageous to customers; (4) Saltchuk has failed to assist YB with the development and installation of cost savings measures; and (5) Saltchuk has provided no evidence of its inability to provided needed capital to YB.[88]

The Consumer Advocate further argues that YB's Motion does not take into account recent operational savings. The Consumer Advocate estimates that approximately $14,585,277 in expense savings have been quantified by YB, but are not incorporated into YB's emergency or temporary rate relief request.[89] The Consumer Advocate maintains that this is "blatantly unfair to customers and serves to dramatically overstate the requested $30.4 million in rate relief . . . ."[90]

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[88]CA Response at 25-25. The Consumer Advocate argues that "Saltchuk's denial of access to capital in order to justify a temporary rate increase is extremely relevant to the determination of whether a temporary rate increase is justifiable[,]" citing to past Commission dockets in which a parent company's ability to financially support a utility was cited as a reason for denying temporary rate relief pending the provision of a permanent rate increase. CA Response at 25-27 (citing Docket No. 6399 (In re: East Honolulu Community Services, Inc.), Docket No. 7926 (In re: Kapalua Water Co.), and Docket No. 03-0369 (In re: Puuwaawaa Waterworks, Inc.).

[89]See CA Response at 28-30.

[90]CA Response at 29.

In addition, the Consumer Advocate raises the following issues to consider in evaluating YB's Motion:

- Disallowance of recovery for depreciation. While YB has characterized its emergency financial situation as a "liquidity crisis," the Consumer Advocate notes that its requested relief is not quantified on a cash flow basis, but is instead based on Earnings Before Interest and Taxes ("EBIT") and thus includes $5.6 million in depreciation expenses.[91] The Consumer Advocate characterizes depreciation expense as "a source of cash flow to YB, above and beyond its immediate cash needs to pay employees and vendors and should not be included in any emergency/interim rate relief required to provide liquidity."[92]
- Adjustments to address overstated jurisdictional allocations. The Consumer Advocate observes that YB's filings in this proceeding and Docket No. 2020-0084, the Commission's investigation into YB's financial condition, reveal that Young Brothers has used different jurisdictional allocation factors to its figures to reflect operating profits and losses from

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[91]CA Response at 31.

[92]CA Response at 32 (emphasis in the original).

its interstate and intrastate services. In particular, the Consumer Advocate notes that in its Motion for Relief, YB appears to indicate that its interstate operations are profitable, and that 100% of its cashflow issues and operational losses are due to its intrastate operations, which is contrary to information provided in Docket No. 2020-0084.[93]

- New business revenues. The Consumer Advocate argues that YB's request does not take into account new revenues arising from YB's new carrier agreement with Matson. As this agreement is providing new revenue to YB, the Consumer Advocate contends that these revenues should be taken into account when considering whether, and how much, rate relief should be provided to YB.[94]

Notwithstanding resolution of YB's Motion, the Consumer Advocate seeks guidance from the Commission as to how the underlying rate case should proceed. For example, the Consumer Advocate proposes: (1) un-suspending and resuming the rate case and treating the COVID-19 impacts as non-recurring; (2) continuing to suspend the rate case and allowing YB time to

[93]See CA Response at 32-34.

[94]See CA Response at 37-38.

supplement its rate case Application to include new adjustments to reflect a sustainable business model, with a new reasonable discovery period for the Consumer Advocate; or (3) withdrawal of the pending rate case, and requiring YB to prepare a new rate case incorporating updated operational assumptions of business going forward.[95]

While opposing YB's Motion and the requested emergency or temporary rate relief, the Consumer Advocate acknowledges YB's current situation and provides an alternative proposal for emergency or temporary rate relief. In particular, the Consumer Advocate proposes using an Earnings Before Interest, Taxes, Depreciation and Amortization ("EBIDTA") approach to determining the appropriate amount of relief for YB.[96] Under this approach, YB would be provided an overall increase of no more than 9.64%, or roughly $8.6 million, which would be collected from both interstate and intrastate customers.[97] With respect to rate design for its alternative proposal, the Consumer Advocate states that "the most expeditious implementation of its alternative recommended increase could be done across the board but, in recognition of the need to re-align rates to equalize the

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[95]See CA Response at 40-42.

[96]CA Response at 43.

[97]See CA Response at 44-45. See also, id. at Exhibit A.

contribution across commodities, alternative rate design could be explored but due to the ongoing pandemic and the economic impacts, the Consumer Advocate recommends that no increase greater than 15% to any tariffed rate should be allowed as a result of this alternative."[98]

The Consumer Advocate emphasizes that this would be temporary rate relief, and subject to the refund provisions of HRS § 271G-17(e).[99] Furthermore, the Consumer Advocate recommends the following additional conditions: (1) YB should restrict the use of its cash to pay unaffiliated vendors and employees; (2) services shall continue for all ports served by YB as part of its current regulated operations; (3) YB shall file periodic reports on plans and efforts to reduce its costs; and (4) prior or coincident with YB's next rate case, the Commission should order a management audit of YB.[100]

3.

YB's Reply

YB argues that the Commission should grant its Motion for Relief because YB has shown both probable entitlement and

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[98]CA Response at 47.

[99]CA Response at 46.

[100]CA Response at 46-47.

financial need, and that the Consumer Advocate's proposed rate increase of $8.6 million is "woefully insufficient."[101] YB argues that the Commission must set "just and reasonable" rates, pursuant to HRS §§ 271G-2 and 271G-16I,[102] and discusses the regulatory principles governing determination of the revenue requirement, stating that it must be reflective of "the normal, on-going operating conditions of the period that the rates are to remain in effect."[103] YB argues that the revenue requirement formula includes depreciation,[104] and that the losses it projects under the present rates demonstrate an urgent financial need for temporary rate

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[101]Reply at 5. YB argues that the Consumer Advocate reaches this recommendation "by three adjustments that are contrary to well- established ratemaking principles: (1) the exclusion of depreciation expense (i.e., the return of invested capital), (2) the imputation of temporary cost savings that cannot continue, particularly the reduction in labor costs for employees who will be needed to provide regulated service, and (3) the imputation of revenues from interstate services that the Commission does not regulate and which it cannot consider in setting rates." Id.

[102]YB also includes a variety of arguments that it has complied with the notice requirements of HRS § 271G-17(e) and HAR Chapter 16-605, in that those provisions "do not require a separate public notice for temporary rate relief requests." YB Reply at 8-9. The Commission does not address these arguments because it finds that sufficient notice to the public was given regarding YB's proposed temporary rate relief in the form of the July 30, 2020 Notice of Evidentiary Hearing and subsequent virtual evidentiary hearing that the Commission held on August 14, 2020.

[103]YB Reply at 18-20.

[104]YB Reply at 21.

relief.[105] YB additionally argues that the Consumer Advocate's use of a cash flow analysis in its Response is inconsistent with generally accepted ratemaking principles.[106]

YB responds to the Consumer Advocate's reference to past Commission consideration of utility temporary rate requests, discussing, in particular, the standard that the Commission explored in Docket No. 6399, Decision and Order No. 10850, from Kansas-Nebraska Natural Gas Co. v. State Corp. Comm'n, 217 Kan. 604, 538 P.2d 702 (1975), which found that the grant of a temporary rate increase should depend on whether "irreparable harm resulting from a distinctive and sudden deficiency in revenue which is not subject to recovery" has occurred.[107] YB further explored that standard as it relates to Docket No. 7926, Order No. 13582 (In re: Kapalua Water Co.), attempting to distinguish itself from the utility in that docket as it relates to support from its own parent

[105]YB Reply at 22.

[106]YB Reply at 30-32. YB further argues that "[t]his amount was based on a very high-level cash flow analysis and incorporating all of the cost impacts of the temporary measures that YB implemented to address the dire financial situation and need to preserve its cash resources pending Commission approval of the Company's general rate increase request." Id. at 65.

[107]YB Reply at 25-26 (citing to Docket No. 6399, In re: East Honolulu Community Services, Decision and Order No. 10850, filed on November 16, 1990 ("D&O 10850")).

company and the relationship of that support to a determination of financial need.[108]

YB argues that its operating revenues are dependent on the State's economy because it "does not generally have a constant customer base from which the Company receives its operating revenues at the regulated intrastate tariff rates."[109] YB further argues that its temporary rate increase should not be reduced by recognizing temporary cost reduction measures that YB implemented "to manage the limited available cash while awaiting Commission approval to increase its present rates[,]" as the Consumer Advocate suggests, because "the test year revenue requirement must be reflective of the conditions under which the rates are to remain in effect."[110] YB, however, also argues that it is appropriate to adjust its 2020 Test Year cargo tonnage to reflect current economic forecasts resulting from the COVID-19 pandemic, because "[i]f YB does not adjust the cargo tonnage to reflect current conditions that impact the cargo tonnage transported by the Company, the present revenues will be overstated and the increase necessary to

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[108]YB Reply at 27.

[109]YB Reply at 33.

[110]YB Reply at 49. YB's Reply at 52-57 details the various cost reduction measures it has undertaken that it states "are not expected to be representative of the Company's operating expenses under normal on-going operations." Id. at 51.

produce the revenue requirement will be understated."[111] YB also responds to a variety of the Consumer Advocate's arguments regarding its operating revenue declines, operating expenses,[112] and past rate case settlements in its Reply.[113]

The Commission notes that in YB's Motion for Relief, it initially states that "[h]aving covered more than $21 million in losses for YB from 2018 and 2019, YB's parent company informed YB that it can no longer afford to provide Young Brothers with the cash infusions necessary to cover the net operating losses without adequate and immediate rate relief, particularly in the COVID-19 economic environment."[114] However, YB states in its Reply that:

> [I]t is not a matter of whether Saltchuk or its owners are financially able to provide the liquidity needed by YB to meet its needs. The question, instead, is whether the Commission will establish the conditions that would induce the parent (i.e., Saltchuk) to invest additional capital in YB.[115]

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[111]YB Reply at 49-50.

[112]YB reiterates its arguments that its operating expenses are primarily fixed, YB Reply at 35-36, and responds to the Consumer Advocate's concerns about increased rate base by stating that its rate base "appropriately reflects the inclusion of the approximately $80 million cost for the four new tugs that were placed in service before the end of 2019 and are expected to remain in service for the duration of the 2020 Test Year." YB Reply at 37 (noting that the acquisition of the four new tugs was financed with funds from Saltchuk). Id. at 39.

[113]YB Reply at 43-47.

[114]Motion for Relief at 11 (emphasis added).

[115]YB Reply at 42 (emphasis added).

YB further states that "[g]iven the losses that YB has experienced and continues to experience, Saltchuk has decided not to make additional investments."[116]

II.

DISCUSSION

As a preliminary matter, the Commission takes note of the extraordinary circumstances surrounding this proceeding, including the unprecedented challenges arising from the COVID-19 pandemic, the economic distress facing both public utilities and their customers, and the need for both stability and transparency during these difficult times. Young Brothers' Motion for Relief presents the Commission with a number of challenges, including the stated urgent need for an expedited Commission review,[117] the potential financial consequences for both Young Brothers, its customers, and the public, the potential impact to intra-island shipping, and the need to maintain transparency. In the face of these important considerations and current uncertainties, the Parties and Commission must remain flexible and adapt to the

[116]YB Reply at 42.

[117]As previously discussed, YB's Motion for Relief was filed on July 7, 2020, and it requests a decision from the Commission no later than August 17, 2020. YB Motion for Relief at 2 n.3.

rapidly evolving conditions to the best of their abilities in order to best serve the public interest.

While observing the ongoing nature of the COVID-19 pandemic and its financial consequences, the Commission also notes that prior to the pandemic, Young Brothers has filed three rate case applications with the Commission in the past four years, requesting rate increases as a result of increasing operating expenses largely due to labor and shared services costs, and flat or decreasing revenues due to shifts in cargo volume.[118] In Order No. 37161, the Commission previously observed that when comparing YB's 2015 financial results to its 2020 budget, revenues have increased by just 0.5%, while expenses have increased more than 26% over the same time period.[119]

After providing notice of its liquidity crisis in May 2020,[120] as discussed above, Young Brothers subsequently requested, but did not receive, emergency financial assistance from the Governor and Legislature in the form of CARES Act funding, and from the Counties pursuant to Senate Resolution No. 125,[121] and YB states that while it has pursued other governmental funding

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[118] See Docket Nos. 2014-0016, 2017-0363, and 2019-0117.

[119] See Docket No. 2020-0084, Order No. 37161 at 5, and accompanying table.

[120] See YB's May 26 Letter.

[121] YB Reply at 3-4.

(i.e., through the Paycheck Protection Program and Federal Reserve Main Street Lending Program) and third-party financing in an attempt to alleviate its liquidity crisis, such funding is inaccessible due to YB's ineligibility under the application criteria[122] and/or because YB does not have adequate debt service coverage.[123] As such, YB states that it files the instant request for temporary rate relief because it was "left . . . with no choice but to ask customers to bear a share of the burden of the current crisis."[124]

A.

Legal Standard

HRS § 271G-17(e) governs temporary rate increases for water carriers and states:

> (e) When a rate increase application is filed, the [C]ommission 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; provided that the [C]ommission shall by order require the carrier to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in

[122]YB June 10 Status Conference Presentation at 11; Testimony of Jay Ana, YB President, Recording of Evidentiary Hearing at 01:24:47-1:25:36.

[123]Recording of Evidentiary Hearing at 01:25:55-01:26:33; see also Docket No. 2020-0084, "Supplemental Response of Young Brothers, LLC to the Public Utilities Commission's PUC-IR-I, the Consumer Advocate's CA-IR-4," on July 13, 2020.

[124]YB Reply at 4.

> whose behalf such amounts are paid, and upon completion of the hearing and decision by further order require the interested carrier to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges by its decision shall be found not justified. The interest to be paid shall be the rate of return authorized in the last general rate case proceedings.

Additionally, HAR § 16-605-30, which applies to "Tariff Change or Revision, General Rate Increase, Temporary Rate Increase," states

> **§16-605-30 Tariff changes or revisions.** (a) A water carrier desiring to publish and apply fares or rates and charges, sailing schedules, or rules or conditions different from those previously filed by the water carrier or its agent shall file an application for a tariff change in accordance with the applicable provisions of this chapter and chapter 16-601. . . .

As the Parties have noted, the Commission has evaluated a number of past utility requests for temporary rate increases that provide useful guidance for the present inquiry.[125] However, the Commission also frames its inquiry here by noting that none of these past temporary rate requests were filed in an economic and global health crisis like the present COVID-19 pandemic, and thus

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[125]The Commission notes that while several of these dockets have involved the Commission's consideration of temporary rate relief pursuant to HRS § 269-16(c), rather than HRS § 271G-17(e), those statutory provisions are similar as they relate to temporary relief, and the Commission considers the dockets that discuss temporary relief pursuant to HRS § 269-16(c) instructive in the evaluation of temporary rate relief here. While Commission precedent is not binding on future Commission decisions, the Commission nonetheless finds that these dockets provide useful guidance for consideration in assessing YB's Motion for Relief.

there are necessarily some differences in the application of HRS § 271G-17(e) that result from our present circumstances.

The most extensive discussion of the standard for the Commission's consideration of a temporary rate increase request occurs in In re: East Honolulu Community Services, in which, noting that "[t]he award of a temporary increase is an extraordinary remedy" distinct from interim relief in a general rate case, the Commission found that:

> [F]or a temporary rate increase to be allowed, there must be more than a showing of revenue deficiency, revenue loss, or inability to earn the authorized rate of return. The relief of a temporary rate increase is available on an emergency basis to meet a sudden and urgent financial need. There must be a showing of irreparable harm resulting to the utility from a distinctive and sudden deficiency in revenue, which is not subject to recovery.[126]

Further, the Commission in In re: East Honolulu Community Services states that the "standards for showing probable entitlement for a temporary rate increase under HRS 269-16(c) are much less strict than the standards for showing probable entitlement for an interim rate increase."[127] Decision on an interim increase "is based on the evidentiary record on the merits of the utility's request for a permanent rate increase. For a temporary rate increase to be

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[126]Order No. 10850 at 14-15 (specifically addressing the "financial need" element of temporary rate relief).

[127]Order No. 10850 at 8.

authorized under HRS 269-16(c), such a complete record may not and need not be available . . . under HRS 269-16(c), only a reasonable probability or likelihood of entitlement to a permanent rate increase is necessary to be shown."[128]

In In re: Maui Electric Company, Ltd., in evaluating temporary versus interim rate relief, the Commission explained that "the reason that [temporary] relief is extraordinary is because the award, if granted and subject to a refund, is based on a proceeding that is directed solely to the question of probable entitlement and financial need for an immediate rate increase and without the benefit of the merits of the rate case 'in toto'."[129]

In In re: Molokai Public Utilities, Inc., Wai'ola O Moloka'i, Inc., and MOSCO, Inc.,("MPU docket"), the Commission initiated a proceeding to address the need for temporary relief for three utilities on Molokai (Molokai Public Utilities, Inc. ("MPU"), Wai'ola O Moloka'i, Inc. ("WOM"), and MOSCO, Inc. ("MOSCO")) after the announcement that its parent company, Molokai Properties, Ltd. ("MPL") intended to cease all current business operations on Molokai and would no longer be able to subsidize its

[128]Order No. 10850 at 8.

[129]Docket No. 4691, In re: Maui Electric Company, Ltd., For Approval of Rate Increases and Revised Rate Schedules, Decision and Order No. 7871, filed on March 8, 2984, at 7.

utility companies.[130] Unlike many of the Commission's past temporary rate increase-related dockets, the MPU docket did not arise out of an existing general rate increase request, but because of the dire circumstances surrounding MPU's planned cessation of business, was a Commission-initiated investigation to "provide any required temporary rate relief to [MPU/WOM/MOSCO]."[131] The Commission opened the docket by proposing temporary rates for MPU/WOM/MOSCO based on the Commission's review and analysis of the utilities' available financial information, specifically their most recent Annual Financial Reports.[132] MPU/WOM/MOSCO proposed their own temporary rates in response to the Commission, based on water or wastewater usage.[133]

Ultimately, in reaching a decision on temporary rate relief pursuant to HRS § 269-16(c), the Commission found it reasonable to adopt MPU/WOM/MOSCO's proposed temporary rates, subject to conditions, noting that "the rates are only intended to

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[130]See Docket No. 2008-0115, In re: Molokai Public Utilities, Inc., Wai'ola O Moloka'i, Inc., and MOSCO, Inc., "Order Approving Temporary Rate Relief for [MPU] and [WOM]," filed on August 14, 2008, at 3 ("Order Approving Temporary Rate Relief for [MPU] and [WOM]").

[131]Order Approving Temporary Rate Relief for [MPU] and [WOM] at 6.

[132]Order Approving Temporary Rate Relief for [MPU] and [WOM] at 5-6.

[133]Order Approving Temporary Rate Relief for [MPU] and [WOM] at 5-6.

be a temporary stop-gap measure to ensure the continuation of essential water and wastewater services to the Utilities' customers."[134] The Commission established the temporary rate increase for six months, MPU and WOM were ordered to file monthly financial reports and bi-weekly status reports with the Commission, and MPU and WOM were directed to file an application for a general rate increase within six months of the date of the order establishing temporary rates.[135] The Commission further stated that temporary rate relief was necessary "[g]iven this urgent situation, and to ensure the continuation of the Utilities' services, which are truly vital to the health and welfare of Molokai residents . . . ."[136]

After review of the applicable standard of review pursuant to HRS § 271G-17(e) and past Commission precedent, the Commission notes that in YB's Reply, YB on the one hand argues the emergency and temporary nature of its request for relief and the rapidly changing economic conditions as a result of the COVID-19 pandemic,[137] but on the other hand also argues that the revenue

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[134]Order Approving Temporary Rate Relief for [MPU] and [WOM] at 16.

[135]Order Approving Temporary Rate Relief for [MPU] and [WOM] at 17-18.

[136]Order Approving Temporary Rate Relief for [MPU] and [WOM] at 18.

[137]Noting "the unexpected decrease in cargo tonnage that YB has experience since the onset of the COVID-19 pandemic" and that

requirement ultimately determined to underlie its temporary relief request must be reflective of "the normal, on-going operating conditions of the period that the rates are to remain in effect[,]" and that any adjustments to YB's proposed revenue requirement must comply with the principles of normalization, annualization, and reclassification "that will be reflective of the utility's financial operations in the future."[138] The Commission finds these arguments to be somewhat contradictory, and, consistent with past Commission decisions evaluating utility requests for temporary rate relief, the Commission makes clear here that: (1) the applicable standard for YB's temporary rate increase request is one of probable entitlement and financial need pursuant to HRS § 271G-17(e); (2) because of the temporary nature of the relief requested, a full Commission inquiry akin to that which the Commission would undergo for a utility's application for an interim or permanent rate increase is not required to evaluate a utility's request for a temporary rate increase under HRS § 271G-17(e) or any proposed adjustments thereto; (3) that the burden to demonstrate probable entitlement and financial need, which are

"an unforeseen world-wide pandemic has changed everything." YB Reply at 39.

[138]YB Reply at 18-20. YB makes this latter argument in response to the Consumer Advocate's proposed adjustments to YB's revenue requirement in the Consumer Advocate's development of its cash flow analysis.

crucial to a finding of temporary rate relief, lies with YB; and (4) due to the temporary nature of the relief under HRS § 271G-17(e), the Commission retains the flexibility to fashion emergency and temporary relief in its discretion to best address the underlying conditions.

B.

## YB's Motion for Relief

While the Commission noted above that past Commission temporary rate relief dockets provide useful guidance for assessing YB's Motion for Relief, we are also in unprecedented times. The circumstances surrounding even the arguably most dire temporary rate request situation posed in the above-cited dockets fall short of the evolving economic realities and shifting landscape of COVID-19. In addition to ongoing challenges with its financial operations, Young Brothers' cargo volumes and revenues are in flux, at least in part, because of changes in customer decision-making behavior and decisions to protect the public by the State's leaders as a result of the pandemic, as well as the current uncertainty around the timeline for the State's re-opening efforts.[139] Young Brothers' parent company has stated

[139]As of August 16, 2020, Hawaii was reporting 220 new coronavirus cases for that day, and a statewide total number of cases for the pandemic period of above 5,000. See https://www.staradvertiser.com/2020/08/16/breaking-news/

that it does not intend to provide YB with further financial support despite the times,[140] and YB has provided the Commission with notice that if it does not receive the requested emergency rate relief by August 17, 2020, it "will have no choice but to immediately begin the process of discontinuing regulated intrastate water carrier services."[141]

YB is required, pursuant to HRS § 271G-17(e), to demonstrate probable entitlement and financial need in support of its request for temporary rate relief. As set forth in In re: East Honolulu Community Services, the showing required for a finding of probable entitlement for the purposes of temporary rate relief is "much less strict" than the standards for showing probable entitlement for an interim rate increase, because "the decision as to whether or not an interim rate increase should be allowed is based on the evidentiary record on the merits of the utility's request for a permanent rate increase."[142] Since "the

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hawaii-reports-220-new-coronavirus-cases-as-statewide-total-rises-above-5000/.

[140]See YB's May 26 Letter; YB Reply at 42.

[141]Notice Regarding Potential Discontinuation of Regulated Intrastate Water Carrier Service of Property at 1-2. The Commission notes that YB stated that it did not have a plan for how it would discontinue the regulated intrastate service, or what its operations would look like were that service to be discontinued. Testimony of Jay Ana, YB President, Recording of Evidentiary Hearing at 2:12:50-2:13:10.

[142]Order No. 10850 at 8.

complete record may not and need not be available" on a request for a temporary rate increase, "only a reasonable probability or likelihood of entitlement to a permanent rate increase is necessary to be shown."[143]

Based on the demonstrated decrease in cargo volumes for YB during the period between March 2020 and the present, in part due to the economic impacts of COVID-19,[144] as well as YB's statements that it has attempted to reduce some of its non-labor costs[145] while maintaining that the bulk of its expenses are fixed and are therefore immutable at the present time,[146] and particularly in light of the uncertain situation surrounding the COVID-19 pandemic, the Commission finds that, in light of these extraordinary circumstances, YB is probably entitled to its requested rate increase for the purposes of temporary rate relief.

The Commission next turns to an assessment of YB's financial need, which requires "more than a showing of revenue deficiency, revenue loss, or inability to earn the authorized rate of return[,]" but rather, the need for funds "available on an

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[143]Order No. 10850 at 8.

[144]See, e.g., Motion for Relief at 21-22 (citing Amended Stipulation filed in Docket No. 2017-0363, Exhibit A, page 1 and YB T-7, page 27 of 48, line 7 and YB-708 page 1 of 2).

[145]Motion for Relief at 25.

[146]See, e.g., Motion for Relief at 22.

emergency basis to meet a sudden and urgent financial need . . . [which involves] a showing of irreparable harm resulting to the utility from a distinctive and sudden deficiency in revenue, which is not subject to recovery."[147]

The Commission has denied a number of past requests for temporary rate relief based on the failure of a utility to adequately demonstrate financial need.[148] While the Commission notes that Young Brothers was experiencing operating losses prior to the COVID-19 emergency[149] and still does not appear to be aggressively exploring all options to manage its operating costs and raise revenues despite the drastic decline in cargo volume (and revenue) associated with the COVID emergency, and that while Saltchuk may have the financial resources to support YB it does not intend to do so,[150] the fact remains that YB is currently the only water carrier providing an essential service to the State, and particularly to the Neighbor Islands, and it has suffered

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[147]Order No. 10850 at 14-15

[148]See, e.g., Order No. 10850 at 15-16; Docket No. 94-0365, In re Lanai Water Co., Decision and Order No. 14151, filed on August 22, 1995; Docket No. 7926, In re Kapalua Water Co., Ltd. and Kapalua Waste Treatment Co., Ltd., Order No. 13582, filed on September 30, 1994.

[149]See discussion of YB's rising operating expenses and flat or declining revenues as evidenced in past YB rate cases, in Docket No. 2020-0084, Order No. 37161.

[150]See YB May 26 Letter.

additional financial losses during the pandemic that will continue for some time into the future.

Based on the information that the Commission has at the present time, and given the expedited nature of the Commission's review owing to YB's urgent need for emergency relief, the Commission determines that YB meets the required showing for financial need pursuant to HRS § 271G-17(e). The Commission thus finds, in its discretion, that temporary rate relief is necessary "[g]iven this urgent situation, and to ensure the continuation of the Utilities' services . . . ."[151]

For the reasons set forth above, the Commission approves YB's request for a revenue increase of $26,997,928, which will result in approved intrastate freight revenues of $87,743,947 for purposes of YB's request for temporary rate relief.[152] Similar to the Commission's decision regarding temporary rate relief in the MPU docket, this is intended to "be a temporary stop-gap measure to ensure the continuation of essential water [carrier service]" during a crucial time for maintaining economic stability in the face of mounting uncertainty.

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[151]Order Approving Temporary Rate Relief for [MPU] and [WOM] at 18.

[152]See YB Reply at 62.

The Commission emphasizes its ongoing serious concerns about YB's rising costs, declining revenues, Saltchuk's decision not to provide further financial support to YB regarding its operating expenses, YB's notice that it may discontinue regulated intrastate water carrier service, and YB's lack of plans for financial contingencies.[153] The Commission also discussed above that Young Brothers was experiencing operating losses prior to the COVID-19 emergency[154] and still does not appear to be aggressively exploring all options to manage its operating costs and raise revenues despite the drastic decline in cargo volume (and revenue) associated with the COVID emergency. As such, the Commission imposes a variety of conditions, described below, that accompany this decision on the temporary rate increase to address these ongoing issues and avoid another situation in which YB finds itself compelled to seek temporary rate relief.

[153]See Testimony of Chris Edwards, YB Director of Finance, Recording of Evidentiary Hearing at 3:54:29-03:54:33.

[154]See discussion of YB's rising operating expenses and flat or declining revenues as evidenced in past YB rate cases, in Docket No. 2020-0084, Order No. 37161.

1.

Rate Design

After reviewing the record in this proceeding, the Commission determines that it will not approve YB's proposed rate design. Instead, the Commission approves an across the board percentage increase, designed to recover the $26,997,928 emergency and temporary rate increase approved herein. According to YB, this amounts to an approximate 46% rate increase.

As YB notes in its Motion for Relief, "temporary or interim rate increases have generally been implemented as an across the board percentage that is applied to utility's present tariff rates."[155] The Commission determines this is a reasonable approach in this instance as well. The Commission specifically finds and concludes as follows.

YB bases its rate design proposal, in part, on results from its updated cost of service ("COS") model, which has not been fully reviewed by the Consumer Advocate nor approved by the Commission. As the Consumer Advocate observes in its Response, YB's updated cost of service model appears to allocate significantly greater shares of YB's total company costs to the regulated, intrastate service. Furthermore, YB uses the results of its model to assert that rates for certain cargo types and ports

[155]YB Motion at 27.

should be dramatically increased, in certain instances by as much as 100% over current rates.

YB has requested a decision on its Motion for Relief by August 17, 2020. This extremely limited timeframe for decision-making on YB's request does not allow a full investigation into the COS model or reasonableness of the results. As a result, YB has not yet demonstrated that the COS model is fairly attributing YB's costs to its respective lines of business, nor that its proposed rate design is reasonable or justified.

The Commission emphasizes that YB is requesting an extraordinary rate increase, in the middle of a global pandemic and one of the worst recessions in recent history. YB's proposed rate design would concentrate impacts of the rate increase on smaller, more vulnerable customers, and in particular, customers located on Hawaii island (Hilo and Kawaihae ports), and those who desire to ship less than container load cargo. YB has not sufficiently shown that its proposed rate design is reasonable in light of these impacts.

Furthermore, the Commission notes that YB's current rate design was proposed by YB itself, in its stipulation with the Consumer Advocate settling its last rate case in Docket

No. 2017-0363.[156] As such, the Commission finds that continuing this approach is appropriate, given the temporary nature of YB's extraordinary request for emergency or temporary rate increase, the limited and ultimately insufficient time to fully evaluate YB's COS model, and the impacts such a substantial rate increase will have on YB's customers.

2.

Return to Pre-COVID Sailing Schedule

YB has stated that its requested revenue increase "was predicated on the Company's pre-COVID-19 sailing schedule[,]"[157] and that "[t]he temporary rate increase assumes the sailing schedule that was in effect immediately prior to the approval of Tariff Transmittal 20-0003 and is expected to generate revenues to recover a portion of the costs that are prudently incurred to provide the regulated, intrastate transport of cargo between the seven ports in the State, without a return on investment."[158] YB also confirmed its intention to return to its pre-COVID sailing

[156]See Decision and Order No. 36140, filed February 1, 2019, in Docket No. 2017-0363.

[157]Supplemental Memo at 2.

[158]YB Reply at 23.

schedule if it was to get its requested temporary rate relief during the Evidentiary Hearing.[159]

As such, given the Commission's approval of YB's requested temporary rate relief here, the Commission directs YB, by September 1, 2020, to return to its pre-COVID-19 sailing schedule. YB shall file tariff sheets with the Commission reflecting the return to that sailing schedule no later than August 24, 2020, with an effective date of no later than September 1, 2020.

C.

YB's General Rate Increase Request in Docket No. 2019-0117

Given the ongoing extraordinary circumstances surrounding the current COVID-19 pandemic, as well as some of the significant concerns regarding YB's business that the Commission noted above, and that have also come to light in the course of the Commission's review of Tariff Transmittal No. 20-0003, and the Commission's emergency investigative proceeding in Docket No. 2020-0084,[160] the Commission suspends consideration of permanent rate relief in the instant docket for twelve (12) months

[159]See Testimony of Jay Ana, YB President, Recording of Evidentiary Hearing at 02:25:32-02:25:36.

[160]See Order No. 37161 at 2-5, and discussion of YB's past rate cases at 6-14.

from the date of this Order (i.e., implements a general rate case "stay out" period).

Forty-five days prior to the end of this twelve-month stay out period, the Parties shall file a letter in this Docket informing the Commission as to whether they wish to resume the instant rate case, or dismiss the instant rate case in favor of filing a new rate case. Regardless, any subsequent rate case filings must have updated test year numbers based on a 2022 test tear to allow current COVID-19 emergency impacts to potentially stabilize.[161] The expectation during this twelve-month stay out period is that YB will have to fund its business with cost reductions, incremental revenues, and/or parent company support, to the extent the temporary relief provided in this Order falls short of YB's expectations based on its representations in its Motion for Relief over the next twelve months. The Commission also will use this twelve-month period to order the performance of an independent financial audit of YB to be completed during that time, discussed in further detail below.

In addition, and given that YB has not yet demonstrated that the updated YB_BIP COS model is fairly attributing YB's costs to its respective lines of business, as noted above, the Commission

[161]This is consistent with YB's assertions that test year data should be reflective of conditions during which the requested rates will be in effect. See YB Reply at 19-20.

finds that it would be efficient to, during the twelve-month rate case stay-out period discussed above, investigate YB's proposed YB_BIP COS model from its September 25, 2019 Application filing, in a separate docket. The docket would be opened to analyze the COS model itself independent of the YB_BIP COS model's application to any particular rate increase request. The Commission directs YB to file an application for review of its proposed YB_BIP COS model, by September 14, 2020, which will be assigned to a new docket.

D.

## Additional Conditions Imposed on YB's Temporary Rate Relief

1.

### Mandatory 6-Month Notice Requirement By YB Before Discontinuance of Regulated Service

Other than examining YB's operations and finances on an ad hoc basis and participating in the Water Carriers Working Group, established by Senate Resolution No. 125 (2020), which will examine mid- and long-term recommendations for interisland water carriers, Young Brothers states that it currently has no formal operational or financial plans for the period beyond April 2021, nor does it intend to develop such formal operational or financial plans.[162]

[162] See Testimony of Chris Edwards, YB Director of Finance, Recording of Evidentiary Hearing at 3:54:30.

The lack of formal operational or financial plans beyond April 2021 casts uncertainty for the Commission as to Young Brothers operations beyond April 2021. Additionally, there is uncertainty on the timing of the cessation of operations should Young Brothers make the decision to discontinue regulated service or terminate water carrier service in the State of Hawaii, including but not limited to the disposition of assets, termination of contracts, and contingency measures that would be implemented. These uncertainties, coupled with the State's desire to continue essential interisland water carrier service with minimal disruption, calls for advanced notice from Young Brothers to the State, Commission, and various stakeholders and customers, in order for actions to be implemented to continue this vital service.

Therefore, the Commission will require that, in the event Young Brothers and/or any of its immediate and ultimate parent companies determine to discontinue regulated service or terminate water carrier operations in the State of Hawaii, that advanced notice be submitted to the Commission. Said notice shall also include actions and timeframes that Young Brothers will take to address the disposition of: (1) Young Brothers assets; (2) contracts with external entities; (3) informing customers; and (4) contingency or other measures that would be implemented. The advanced notice shall be submitted to the Commission no less than six months prior to the date that that Young Brothers and/or any of its immediate and ultimate parent companies determine that regulated service will be discontinued. This notice to the Commission does not relieve YB of any other notice obligations YB may have related to discontinuation of service (i.e., termination of lease(s) with the Department of Transportation ("DOT")/DOT-Harbors; notice of termination of business and employee layoffs with the Department of Labor and Industrial Relations ("DLIR"), etc.).

2.

<u>YB Customer Service Strategy</u>

The Commission's review of Young Brothers' Motion for Temporary Rate Relief has underscored the importance of improvements to YB's customer service practices. In light of the significant rate increase resulting from this Order, YB must redouble its efforts to improve its customer experience and address the absence of policies on customer engagement. The Commission has received numerous comments from customers and the general public in Docket 2019-0117 and in Tariff Transmittal No. 20-0003 that describe substandard customer service. Furthermore, at the Evidentiary Hearing on YB's Motion for Temporary Rate Relief, Young Brothers' Director of Operations indicated that customer outreach and engagement is challenging and that there is no plan in place to address the current deficiencies in outreach and service.[163]

Therefore, the Commission requires that YB file a Customer Service Strategy within three months of the date of this Order (i.e., by November 15, 2020). The Customer Service Strategy should include YB's approach to three (3) operational categories: (1) Customer Communications and Outreach, (2) Customer Engagement, (3) Company Communications, as detailed below. The Customer Service Strategy should provide the basis for Company reforms to existing customer service operations.

The Commission instructs YB to develop a customer- focused vision that can be communicated within YB as part of the Customer Service Strategy. The vision should identify activities or business processes that impact customer service and assess customer needs for those activities. Furthermore, the vision should set goals and standards for customer service.

Customer Communications and Outreach. YB's services are essential to the State of Hawaii and residents rely on these services to supply and conduct business, supply households, and engage in recreational activities. Over the last year, the Commission has received numerous comments from YB's customers that

[163]Testimony of Chris Martin, YB Director of Operations, Recording of Evidentiary Hearing at 04:57:45-04:58:46.

indicate serious deficiencies in customer service and a near absence of outreach.  In the event there are market changes to intraisland transport, YB would be required to improve its communication and outreach to neighbor island communities to maintain a solid customer base.  While YB enjoys its monopoly status and has not needed to focus significant energy on customer service initiatives, it is imperative, as part of this conditional approval, that YB invest the time and resources in developing a comprehensive customer communications and outreach campaign. Customers will face significant rate increases, and with that added financial burden, customers should be afforded drastic improvements in customer service.

<u>Advanced Notifications</u>.  The Commission directs YB to include a plan for delivering advance notifications to customers regarding changes to shipping schedules, cargo handling, tariff changes, and gate hours.  As a result of the COVID pandemic, YB has made numerous adjustments to its operations. For example, on March 26, 2020, YB abruptly announced that it was temporarily not accepting "non-essential" cargo, including privately-owned vehicles ("POVs"), dry mixed cargo, and less than container load [("LCL")] livestock shipments as safety precaution related to COVID-19. The Commission and YB have received number of public comments regarding YB's decision not to accept such cargo. On May 14, 2020, YB announced that "[s]tarting May 15, 2020, as

part of [YB's] phased approach to resume cargo shipments, YB will accept shipping POV[] provided that certain safety precautions during delivery and pick-up are still followed at the ports. ” In light of the above, customers raised concerns that YB had not provided advanced notifications of these changes to YB’s services and gate processing procedures. Given these concerns, YB will include a plan to address inadequacies in customer notifications.

Customer Engagement. At the August 14, 2020 Evidentiary Hearing, Young Brothers’ Director of Operations, when asked about customer service and outreach replied, “We have to put ourselves more out there in the public, I think we have [] . . . to get into the community a little bit, and to have more round table discussions in the community to offer up our experience, and to know who the players are and offering up some solutions.” When asked whether YB had plans for holding town hall meetings or roundtables, Young Brothers’ Director of Operations replied, “no, with COVID, we haven’t really finalized what we been doing with the livestock issues.”[164]

Customer outreach is critical for the long-term success of YB. Through outreach, YB can better understand the needs of the community and the impact that YB’s policies and procedures

[164]Testimony of Chris Martin, YB Director of Operations, Recording of Evidentiary Hearing at 04:57:45-04:58:46.

have on customers. Likewise, through outreach, such as townhall meetings and roundtables, customers can gain insight into YB's operations. This is a mutually beneficial activity that improves the outcomes for all stakeholders. Therefore, the Commission directs YB to include in the Customer Service Strategy a plan for improving outreach to customers and communities.

YB shall develop a permanent process for conducting negotiations and dialogue with customers and trade organizations, similar to those methods employed with the "Livestock Procedures" working group. The approach in the Livestock Procedures working group appears to be successful in mediation of the issues surround the transport of livestock, although mediation is still ongoing. The Commission urges YB to continue these negotiations, and to include this customer engagement approach in the Customer Service Strategy as a resource for addressing the concerns of other community members and trade organizations.

Additionally, the Commission directs YB to include a strategy for soliciting and accepting customer feedback on services provided as well as plan for addressing customer concerns in a timely manner. In the Customer Service Strategy, YB should include a process that provides customers with company contact information for customer service inquiries and multimode channels for communications.

Company Communication. YB shall include a plan for improving communication within the Company for customer interactions and messaging. The Commission acknowledges that a number of customers have submitted comments in Docket 2019-0117 and in Tariff Transmittal No. 20-003 indicating there is inconsistent messaging of policies and procedures between the employees on the docks and public notifications. In order to address this deficiency, YB should include plans for customer experience employee training and develop a robust internal communication plan for standardizing customer communications.

3.

Financial and Management Audit of YB

As discussed above, the Commission's expedited review of Young Brothers' Motion for Relief has highlighted financial and management practices that have contributed significantly to YB's current financial condition and remain a concern to the Commission. Moreover, Young Brothers does not appear to be addressing these issues with the urgency required by its current liquidity crisis during this unprecedented event — a global pandemic that is dramatically impacting the State's economy and Young Brothers' business that will continue for an unknown period. Instead, Young Brothers appears to be on a trajectory to request further rate increases and public assistance, particularly if the State's economic recovery is slower than YB has assumed in the projections underlying this emergency rate request.

Given the expedited review timeline for the Motion for Relief and shared concern for uninterrupted interisland shipping services, the Commission does not have time to fully investigate these practices prior to granting YB temporary relief. However, the Commission will initiate an audit of Young Brothers' financial and management practices by an independent party.[165] Details on regarding the audit will be forthcoming in a subsequent order.

In initiating this audit, the Commission takes note that Young Brothers was experiencing operating losses prior to the COVID-19 emergency[166] and still does not appear to be aggressively exploring all options to manage its operating costs and raise revenues despite the drastic decline in cargo volume (and revenue) associated with the COVID emergency. Without urgency and commitment to address these structural factors affecting Young Brothers' business, the Commission remains concerned that Young

[165]For an example of a past Commission-ordered management audit, see Docket No. 2019-0085, In re Hawaiian Electric Company, Inc., Application for Approval of a General Rate Increase and Revised Rate Schedules and Rules, "Management Audit of the Hawaiian Electric Company (HECO) Final Report," filed on May 13 and May 14, 2020.

[166]See discussion of YB's rising operating expenses and flat or declining revenues as evidenced in past YB rate cases, in Docket No. 2020-0084, Order No. 37161.

Brothers will return to request additional rate increases from its customers, possibly before the end of the calendar year.

These concerns are further underscored by statements made by Young Brothers' senior management during the August 14, 2020 Evidentiary Hearing. The excerpts summarized below are not an exhaustive list of the Commission's concerns raised with Young Brothers' management team but are meant to illustrate further the reasons that the Commission is initiating an independent audit:

- Young Brothers' President was questioned about how long Young Brothers could commit to maintaining services if the emergency rate increase was granted in full and indicated that Young Brothers could possibly continue until April 2021 but may need another rate increase sooner if its financial condition deteriorated again.[167]

- Young Brothers' Director of Finance described that YB's projections for cargo volume and revenue supporting the emergency rate increase assume the State's economy will recover in the 3rd and 4th quarters of 2020. He indicated that if the recovery stalls, or the State re-enters a second lockdown period, the Company may experience operating losses again and would likely seek another rate increase.[168]

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[167]Testimony of Jay Ana, YB President, Recording of Evidentiary Hearing from 2:27:00-2:42:00.

[168]Testimony of Chris Edwards, YB Director of Finance, Recording of Evidentiary Hearing at 2:48:00–2:52:00. Additionally, in an admission very concerning to the Commission, when the Company's Director of Finance was asked by the Consumer Advocate about contingency plans regarding its financial condition, he stated, "we don't have a financial plan much past this." Testimony of Chris Edwards, YB Director of Finance, Recording of Evidentiary Hearing at 3:54:29-03:54:33.

- Young Brothers' Director of Operations has management responsibility for the Company's shoreside cargo handling and labor expenses, which according to YB's filings, remain the single largest operating expense and fastest growing line item. When this witness was asked what actions Young Brothers would take to manage these costs if the emergency rate increase was granted in full, he stated YB was not planning to address them under that outcome.[169]

The Consumer Advocate has expressed similar concerns about YB's current cost management efforts during its review of this request.[170] In addition, the Consumer Advocate has asserted that Young Brothers' parent company and affiliate transactions are at least partly responsible for the company's current financial position.[171] Consequently, the Consumer Advocate,[172] and one other

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[169]Testimony of Chris Martin, YB Director of Operations, Recording of Evidentiary Hearing at 5:12:00-5:17:00.

[170]See CA's Response at 18-23. The Commission further notes that YB's statements regarding its relationship with Saltchuk do not indicate to the Commission whether YB even sees itself playing an active role in its own financial management - for example, YB states that "it is not a matter of whether Saltchuk or its owners are financially able to provide the liquidity needed by YB to meet its needs. The question, instead, is whether the Commission will establish the conditions that would induce the parent (i.e., Saltchuk) to invest additional capital in YB." YB Reply at 42 (emphasis added).

[171]See CA Response at 23-27.

[172]CA Response at 46-47.

commenter, have recommended that the Commission initiate an audit to investigate these issues further.[173]

While the Commission is approving the temporary rate relief amount requested by Young Brothers to provide the immediate lifeline it states is required to maintain continuous services to the State's communities, this Order should not be taken as an implicit endorsement of the practices that the Commission and Consumer Advocate have identified in their reviews of YB's request. Given the self-admitted dire circumstances that Young Brothers is facing and significant impact that the emergency rate increase will have on its customers, the Commission would expect greater impetus to take corrective actions to improve YB's financial position. The Commission will further review the Company's financial and management practices in detail, including YB's parent company relationship and financial arrangements with affiliates. Further details regarding the independent audit will be identified in a subsequent order.

While, as discussed above, this docket remains suspended for the purposes of reviewing YB's request for general rate relief for twelve months from the date of this Order, the independent audit discussed above will be conducted in the instant docket

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[173] See comments filed by Pulama Lanai in Docket No. 2019-0117 on August 11, 2020.

during that twelve-month suspension period so that it can inform the Commission's consideration of any future rate increase requests.

## III.

## ORDERS

THE COMMISSION ORDERS:

1. Young Brothers' Motion for Relief, filed on July 7, 2020, is granted, subject to the conditions set forth herein. YB is authorized to increase its intrastate revenues by $26,997,928, which represents an approximate 46% increase over intrastate freight revenues at present rates, which represents an increase in Young Brothers' intrastate freight revenue requirement to $87,743,947. Specifically:

A. The Commission requires that, in the event Young Brothers and/or any of its immediate and ultimate parent companies make the determination to discontinue regulated service or terminate water carrier operations in the State of Hawaii, that advanced notice be filed with the Commission. Said notice shall also include actions, and their timeframes, that Young Brothers will take to address the disposition of (1) Young Brothers assets; (2) contracts with external entities; (3) informing customers; and (4) contingency or other measures that would be implemented. The advanced notice shall be submitted to the Commission no less than six months prior to the date that Young Brothers and/or any of its immediate and ultimate parent companies states that regulated service will be discontinued. This notice to the Commission does not relieve YB of any other notice obligations YB may have related to discontinuation of service (i.e., termination of lease(s) with DOT/DOT-Harbors; notice of termination of business and employee layoffs with DLIR, etc.).

B. The Commission requires that YB file a Customer Service Strategy within three months of the date of this order (i.e., by November 15, 2020). The Customer Service Strategy should include YB's approach to three (3) operational categories: (1) Customer Communications and Outreach, (2) Customer Engagement, and (3) Company Communications. The Customer Service Strategy should provide the basis for Company reforms to existing customer service operations.

C. The Commission will initiate an audit of Young Brothers' financial and management practices by an independent party. The details of the audit will be forthcoming in a subsequent order.

2. YB shall file tariff sheets to update its Local Freight Tariff No. 5A (and any other applicable tariff), consistent with this Order, by August 24, 2020, with an effective date of no later than September 1, 2020. Said filing, which is intended to implement the increases in rates and charges authorized by this

Order, shall not take effect without the Commission's affirmative approval.

3. Pursuant to HRS § 271G-17(e), for purposes of addressing any later need for refund, Young Brothers shall keep an accurate account in detail of all amounts received by reason of the temporary increase herein granted specifying by whom and in whose behalf such amounts were paid.

4. As discussed above, given the Commission’s decision to grant YB the temporary rate relief it requests in its Motion for Relief, the Commission directs YB to make any necessary logistical adjustments to allow it to return to its pre-COVID-19 sailing schedule (i.e., the sailing schedule in place prior to its filing of Transmittal No. 20-0003 on April 24, 2020) and resume that sailing schedule no later than September 1, 2020. YB shall file tariff sheets with the Commission reflecting the return to its pre-COVID-19 sailing schedule by August 24, 2020, with an effective date of no later than September 1, 2020.

5. The Commission suspends any further consideration of YB’s request for a general rate increase for twelve (12) months following the date of this Order, subject to the qualification discussed in Ordering Paragraph No. 6 regarding a financial and management audit of YB, below. Forty-five days prior to the end of this twelve-month stay out period, the Parties shall file a letter in this Docket informing the Commission as to whether they

wish to resume the instant rate case, or dismiss the instant rate case in favor of filing a new rate case. Regardless, any subsequent rate case filings must have updated test year numbers based on a 2022 test tear to allow current COVID-19 emergency impacts to potentially stabilize.

6. While this docket remains suspended for the purposes of reviewing YB's request for general rate relief for twelve (12) months from the date of this Order, the independent financial and management audit discussed above in Ordering Paragraph No. 1.C. will be conducted in the instant docket during that 12-month suspension period so that it can inform the Commission's consideration of any future rate increase requests.

DONE at Honolulu, Hawaii AUGUST 17, 2020.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By James P. Griffin
James P. Griffin, Chair

By Jennifer M. Potter
Jennifer M. Potter, Commissioner

By ______________________
Leodoloff R. Asuncion, Jr., Commissioner

APPROVED AS TO FORM:

Caroline C. Ishida
Caroline C. Ishida
Commission Counsel

2019-0117.ljk

CERTIFICATE OF SERVICE

Pursuant to Order No. 37043, the foregoing Order was served on the date it was uploaded to the Public Utilities Commission's Document Management System and served through the Document Management System's Electronic Distribution List.

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