

THE SENATE  
THIRTIETH LEGISLATURE, 2020  
STATE OF HAWAII

S.R. NO. 125  
S.D. 1

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## SENATE RESOLUTION

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REQUESTING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE FUNDING TO WATER CARRIERS FOR THE PURPOSE OF PROVIDING FINANCIAL ASSISTANCE 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.

1 WHEREAS, the COVID-19 pandemic is causing a significant  
2 decrease in interisland cargo volumes that has put financial  
3 stress on all forms of interisland transportation of goods and  
4 property; and

5  
6 WHEREAS, for counties with populations of less than five  
7 hundred thousand, interisland cargo transportation is a life-  
8 line for the residents and businesses in those counties and an  
9 interisland tug and barge service is essential to the State's  
10 economic recovery from the COVID-19 pandemic's deleterious  
11 statewide economic effects; and

12  
13 WHEREAS, it is in the State's best interests for the State  
14 of Hawaii to provide financial assistance to any interisland  
15 water carrier of property holding a Certificate of Public  
16 Convenience and Necessity pursuant to Chapter 271G, Hawaii  
17 Revised Statutes, which has suffered significant financial harm  
18 due to the economic effects of the COVID-19 pandemic; and

19  
20 WHEREAS, it is in the public interest for the State to  
21 provide subsidies to interisland cargo carriers to offset the  
22 costs incurred by those carriers as a result of providing cargo  
23 carrier services to ports serving counties within the State  
24 having a population of less than five hundred thousand, and to  
25 address the impacts of the COVID-19 pandemic and to ensure the  
26 continued operations of an interisland tug and barge service to  
27 advance the State's economic recovery from the COVID-19  
28 pandemic's statewide economic effects; and  
29



1 WHEREAS any funds provided as financial assistance to any  
2 interisland water carrier of property holding a Certificate of  
3 Public Convenience and Necessity that has suffered significant  
4 financial harm due to the economic effects of the COVID-19  
5 pandemic are to be used by the water carrier for operating  
6 expenses, excluding payments to any parent company or other  
7 affiliates of the same parent company, executive bonuses,  
8 profits for the water carrier to which assistance is being  
9 provided, or profits for any affiliated business of the water  
10 carrier; and it must also be required that certain operations  
11 continue for ports serving counties within the State having a  
12 population of less than five hundred thousand; now, therefore,  
13

14 BE IT RESOLVED by the Senate of the Thirtieth Legislature  
15 of the State of Hawaii, Regular Session of 2020, that the  
16 Department of Transportation and respective counties are  
17 requested to address, on or before September 30, 2020, the  
18 impacts of the COVID-19 pandemic and to offset costs incurred by  
19 any water carrier as a result of providing interisland water  
20 carrier service to ports within the State, by providing a  
21 combined total of at least \$15,000,000 in funding directly to a  
22 water carrier for the purposes of providing financial assistance  
23 to support the continuation of different routes and lines of  
24 services within the State; and  
25

26 BE IT FURTHER RESOLVED that such funds shall not be used  
27 for the following purposes:  
28

- 29 (1) As payment in any form or nature to any parent company  
30 of the water carrier or affiliate of any parent  
31 company of the water carrier, except for tug assist,  
32 lease, or charter payments to an affiliate company of  
33 the water carrier receiving such funds; provided  
34 further, however, that the rates for any such tug  
35 assist, lease, or charter must be at or below market  
36 rates;  
37
- 38 (2) As profits for the water carrier, any parent company  
39 of the water carrier, or any affiliate of any parent  
40 company of the water carrier;  
41



- 1 (3) As repayment of any loan, bond, or other form of  
2 indebtedness of any parent company of the water  
3 carrier or any affiliate of any parent company of the  
4 water carrier;  
5  
6 (4) As payment for any capital expenditure made by any  
7 parent company of the water carrier for assets held by  
8 the water carrier; or  
9  
10 (5) As payment for executive bonuses; any advertising or  
11 marketing, except customer and employee  
12 communications; club or membership dues; charitable or  
13 political contributions; non-essential business  
14 travel; seminars, conferences, or conventions;  
15 entertainment expenses; or any other non-operating  
16 expenses; and  
17

18 BE IT FURTHER RESOLVED that on or before August 1, 2020,  
19 the Public Utilities Commission, in collaboration with the  
20 Department of Commerce and Consumer Affairs' Division of  
21 Consumer Advocacy and any interisland water carriers operating  
22 in the State, is requested to convene a working group to  
23 recommend mid-term and long-term solutions to balance the need  
24 for continuous interisland water carrier service throughout the  
25 State with the need for water carriers to maintain financial  
26 sustainability; and  
27

28 BE IT FURTHER RESOLVED that the working group consist of:  
29

- 30 (1) The Senate President or the Senate President's  
31 designee;  
32  
33 (2) The Speaker of the House of Representatives or the  
34 Speaker's designee;  
35  
36 (3) The mayor of each county or the mayor's designee;  
37  
38 (4) One representative from the Public Utilities  
39 Commission;  
40  
41 (5) One representative from the Department of Commerce and  
42 Consumer Affairs' Division of Consumer Advocacy;



- 1  
2 (6) One representative from the Department of Business,  
3 Economic Development, and Tourism;  
4  
5 (7) One representative from the Department of  
6 Transportation;  
7  
8 (8) One representative from the Department of Agriculture;  
9  
10 (9) The chairpersons of the legislative standing  
11 committees on transportation;  
12  
13 (10) One representative from each water carrier operating  
14 in the State; and  
15  
16 (11) One representative from the International Longshore  
17 and Warehouse Union Local 142; and  
18

19 BE IT FURTHER RESOLVED that the working group is requested  
20 to submit a final report of its findings and recommendations,  
21 including any proposed legislation, to the Legislature and the  
22 Governor no later than twenty days prior to the convening of the  
23 Regular Session of 2022; and  
24

25 BE IT FURTHER RESOLVED that certified copies of this  
26 Resolution be transmitted to the Senate President; Speaker of  
27 the House of Representatives; Chairperson of the Public  
28 Utilities Commission; Chairperson of the Board of Agriculture;  
29 Director of Business, Economic Development, and Tourism;  
30 Director of Commerce and Consumer Affairs; Director of  
31 Transportation; chairpersons of the legislative standing  
32 committees on transportation; President of Young Brothers, LLC;  
33 President of the International Longshore and Warehouse Union  
34 Local 142; and the mayor of each county.



**[\$271G-2] Declaration of policy.** The legislature of this State recognizes and declares that the transportation of persons and of property, for commercial purposes, by water within the State or between points within the State, constitutes a business affected with the public interest. It is intended by this chapter to provide for fair and impartial regulation of such transportation, so administered as to recognize and preserve the inherent advantages of such transportation, in the interest of preserving for the public the full benefit and use of the waterways consistent with the public safety and the needs of commerce: to promote safe, adequate, economical, and efficient service among carriers, to encourage the establishment and maintenance of reasonable rates and charges for transportation and related accessorial service, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices, all to the end of developing, coordinating, and preserving a sound transportation system by water. This chapter shall be administered and enforced with a view to carrying out the above declaration of policy. [L 1974, c 94, pt of §1]

[Previous](#)

[Vol05\\_Ch0261-0319](#)

[Next](#)

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

-----In the Matter of-----)	
)	
PUBLIC UTILITIES COMMISSION	) DOCKET NO. 2020-0084
)	
Instituting an Emergency	)
Investigative Proceeding Regarding	)
Young Brothers, LLC's Financial	)
Condition.	)
_____	)

ORDER NO. 37161

INSTITUTING AN EMERGENCY INVESTIGATIVE PROCEEDING REGARDING  
YOUNG BROTHERS, LLC'S FINANCIAL CONDITION

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

-----In the Matter of-----)  
)  
PUBLIC UTILITIES COMMISSION ) Docket No. 2020-0084  
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Instituting an Emergency ) Order No. **37161**  
Investigative Proceeding Regarding )  
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Condition. )  
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INSTITUTING AN EMERGENCY INVESTIGATIVE PROCEEDING REGARDING  
YOUNG BROTHERS, LLC'S FINANCIAL CONDITION

By this Order, the Public Utilities Commission ("Commission") (1) opens this docket to investigate YOUNG BROTHERS, LLC's ("Young Brothers" or "YB") financial condition, including to address identified requests for relief that have been filed and may be filed in the future with the Commission, as further detailed herein;<sup>1</sup> (2) names as parties to this docket YB and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 16-601-62(a); and (3) invites any

<sup>1</sup>The Commission notes that it originally opened this docket 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 in Order No. 37160, and subsequently filed the instant Order.

interested individual or organization to file a motion to intervene or participate without intervention in this docket within twenty (20) days of the filing of this Order, in accordance with HAR Chapter 16-601.

The Commission opens this docket during a tumultuous period for our State, our country, and the world, given the major public health and economic impacts resulting from the COVID-19 Pandemic. During this time the Commission cannot stress enough the paramount importance of maintaining affordable, reliable service to the Neighbor Islands, as Young Brothers also alludes to in its May 26, 2020 Letter to the Commission.<sup>2</sup> However, it is crucial that YB demonstrate its understanding that its continued ability to provide affordable, reliable service to the State is contingent upon YB (1) stabilizing its finances; (2) mitigating the effect of YB's current and future financial position on customers; and (3) improving its long-term competitive position. Any solutions that YB or any other party recommends during this time must tie back to these core principles for YB to balance maintaining financial viability with providing affordable, reliable service to its customers.

<sup>2</sup>"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/main/young-brothers-and-consumer-advocate-file-letters-with-the-commission-regarding-young-brothers-financial-situation/>.



The Commission provides some background, below, on YB's recent rate cases, current financial condition, and various requests for relief that have been proposed by Young Brothers and the Consumer Advocate. The overall story that YB's financial data tells beginning well before this Pandemic is one of rising operating expenses and flat or falling revenues, resulting in consecutive YB requests for rate increases to compensate for declining net income.<sup>3</sup>

It is with the benefit of this recent historical context that the Commission opens this emergency docket to assist Young Brothers in developing solutions to address its current financial condition, including to examine identified requests for relief that have been filed and may be filed in the future with the Commission. Given these acknowledged trends, the purpose of this docket is to allow for YB and other parties to present solutions, with assistance from the Commission, that will not only seek to alleviate YB's imminent financial distress, but also (1) stabilize YB's finances; (2) mitigate the effect of YB's current and future financial position on customers; and (3) improve its long-term competitive position.

<sup>3</sup>YB has provided this data to the Commission and Consumer Advocate pursuant to its rate cases and other annual reporting requirements.

I.

BACKGROUND AND PROCEDURAL HISTORY

A.

Young Brothers' Recent Financial History

Young Brothers has filed three rate case applications with the Commission over 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.<sup>4</sup> Comparing YB's 2015 financial results to the 2020 budget, revenues have increased by just 0.5%, while expenses have increased more than 26% over the same time period. According to YB, the impact of the COVID-19 pandemic is expected to further deteriorate its financial condition.

<sup>4</sup>See Docket Nos. 2014-0016, 2017-0363, and 2019-0117.

These trends are illustrated in the table below:<sup>5</sup>

	2015 Actual	2016 Actual	2017 Actual	2018 Actual	2019 Actual	2020 Jan. Budget	2020 Apr. Forecast	2020 May Forecast
<b>Total Revenue</b>	\$119,838,680	\$115,691,547	\$114,001,724	\$119,455,380	\$121,229,030	\$120,431,611	\$102,240,062	\$99,589,850
<b>Total Expenses</b>	\$105,025,339	\$113,755,919	\$114,165,234	\$129,242,489	\$127,883,039	\$132,718,574	\$124,885,802	\$123,870,829
<b>Net Operating Income (Loss)<sup>6</sup></b>	<b>\$14,813,341</b>	<b>\$1,935,628</b>	<b>(\$163,510)</b>	<b>(\$9,787,109)</b>	<b>(\$6,654,009)</b>	<b>(\$12,286,963)</b>	<b>(\$22,645,740)</b>	<b>(\$24,280,979)</b>

<sup>5</sup>Actual financial results for 2015 and 2016 are reported in Amended YB-WP-G00, filed on July 24, 2018, in Docket No. 2017-0363. Results for 2017 and 2018 are reported in YB's 2018 Annual Financial Report, filed on July 2, 2019. Data for 2019 is reported in YB's AFRA 12 Month Trailing Cost of Service Report (Dec. 2019), filed on February 6, 2020, in Docket No. 2013-0032. The budget and forecasts for 2020 are reported in the YB Letter Response to COVID-19 Financial and Procedural Update Request, filed on May 5, 2020 in Docket No. 2019-0117, and YB Letter Notice Regarding Young Brothers, LLC's Liquidity Crisis and Potential Suspension of Operations, filed on May 26, 2020.

<sup>6</sup>Net operating income (loss) shown in the table above is based on operating revenues and expenses, but does not include interest, taxes (including deferred taxes), other non-operating gains/losses (such as gains on sales or impairment charges). Financial data was compiled from reports publicly filed by Young Brothers with the Commission between July 2018 and May 2020 (see note 5, infra.).

The Commission is aware that in YB's May 26 and May 29 Letters, YB claimed even higher losses of approximately \$11.4 million in 2018 and \$10.3 million in 2019, compared to the approximately \$9.8 million and \$6.7 million net operating losses, respectively, shown in the table above. While YB did not provide a detailed breakdown of the claimed losses in their May 26 and May 29 Letters, YB's recent numbers are consistent with a general trend of rising costs and deteriorating financial condition during this timeframe, and further support the urgent need to stabilize YB's finances, mitigate the effect of YB's current and future financial position on customers, and improve its long-term competitive position.

The following discussion of YB's recent rate cases provides additional context.

**2016 Test Year Rate Case:** YB's 2016 test year rate case application was filed on April 12, 2016, and was assigned Docket No. 2016-0014. The 2016-0014 Application requested a \$3,135,000 revenue increase, which represented a 4.36% across-the-board increase over revenues at then-effective rates, which YB stated was based on an intrastate rate of return ("ROR") of 10.25% and an intrastate revenue requirement of \$75,019,721.<sup>7</sup> Young Brothers represented that its requested rate increase was necessary "to cover rising operating expenses in the face of only fairly muted projected cargo volume growth."<sup>8</sup> The Commission held statewide public hearings on YB's 2016-0014 Application in June and July of 2016.<sup>9</sup>

Docket No. 2016-0014 proceeded according to the established procedural schedule,<sup>10</sup> and, per that schedule,

<sup>7</sup>Docket No. 2016-0014 Application at 10.

<sup>8</sup>Docket No. 2016-0014 Application at 16.

<sup>9</sup>See Affidavits of Publication, Public Meeting Sign-up Sheets, and Written Testimony received in Docket No. 2016-0014.

<sup>10</sup>Docket No. 2016-0014, Order No. 33796, "Adopting the Consumer Advocate's Proposed Procedural Order, As Modified, and Addressing Related Matters," filed on July 15, 2016 (Procedural Schedule); see also Young Brothers, Limited's and the Division of Consumer Advocacy's Joint Motion for Approval of Stipulation; and Stipulation," filed on September 20, 2016 ("Sept. 20 Stipulation") (in which "[t]he Parties agree[d] to immediately suspend and toll

Young Brothers and the Consumer Advocate reached a global rate case settlement on February 3, 2017.<sup>11</sup> In the 2016-0014 Stipulated Settlement Agreement, YB and the Consumer Advocate stated that "[a]fter careful consideration of filed evidence and additional shared information," they were requesting "Commission approval of the [Stipulated Settlement Agreement] terms and conditions in order to resolve all disputed issues in the pending Young Brothers rate case . . . ."<sup>12</sup> Specifically, and among other provisions, "Young Brothers and the Consumer Advocate agree[d] that an intrastate freight rate annual revenue increase of \$88,000 [wa]s

the current regulatory schedule as set forth in Order 33796 and Order 33913 [,]" proposed a new procedural schedule to govern the remaining steps in the docket, and waived the six month rate case final order deadline set forth in HRS 271G-17(d). Sept. 20 Stipulation at 3-4. Prior to the Parties' submission of the Sept. 20 Stipulation, the Commission issued Order No. 33913, "Establishing Certain Procedural Matters for the Evidentiary Hearing," in anticipation of the evidentiary hearing scheduled for September 27-29, 2016. In the Sept. 20 Stipulation, the Parties stated that they were endeavoring to "adhere to the working philosophy of [HRS] section 5-7.5 [(Aloha Spirit)]" and "to attempt to mutually resolve their differences in good faith and without Commission intervention . . . ." Id. at 2.

<sup>11</sup>"Young Brothers, Limited's and The Division of Consumer Advocacy's Joint Motion for Approval of Stipulated Settlement Agreement; and Stipulated Settlement Agreement," filed on February 3, 2017 (respectively "2016-0014 Joint Motion for Settlement" and "2016-0014 Stipulated Settlement Agreement").

<sup>12</sup>2016-0014 Stipulated Settlement Agreement at 1 (emphasis added).

reasonable and should be approved by the Commission. . .”<sup>13</sup> utilizing a stipulated 9.56% ROR. In the 2016-0014 Joint Motion for Settlement, “the Parties further request[ed] a waiver of the remaining procedural steps and requirements of the procedural orders and schedule from December 28, 2016 forward, including the evidentiary hearing scheduled for March 7-9, 2017.”<sup>14</sup>

The Commission issued an order granting the Parties’ waiver of the evidentiary hearing and requesting that the Parties file supporting documentation for the Stipulated Settlement Agreement on February 13, 2017.<sup>15</sup> After review of the supporting documentation, the Commission approved the Stipulated Settlement Agreement on May 4, 2017.<sup>16</sup> YB’s new rates subsequently went into effect on June 6, 2017, upon issuance of the Commission’s order approving YB’s revised tariff sheets and rate schedules.<sup>17</sup> Based on YB’s active participation in the 2016-0014 Stipulated

<sup>13</sup>2016-0014 Stipulated Settlement Agreement at 1, and Exhibit A at 1.

<sup>14</sup>2016-0014 Joint Motion for Settlement at 2.

<sup>15</sup>Order No. 34389, “Addressing the Parties’ Joint Motion for Approval of Stipulated Settlement Agreement,” filed on February 13, 2017.

<sup>16</sup>Decision and Order No. 34535, filed on May 4, 2017.

<sup>17</sup>See Order No. 34598, “Regarding Revised Tariff Sheets and Rate Schedules,” filed on June 6, 2017, approving YB’s revised tariff sheets and rate schedules filed on May 11 and supplemented on May 18, 2017.

Settlement Agreement's negotiation and submission, the Commission's presumption was that YB's agreed-upon rate of return in this rate case was sufficient to meet its future income requirements.<sup>18</sup>

**2018 Test Year Rate Case:** Approximately 6 months after the Docket No. 2016-0014 rates went into effect, YB filed its 2018 test year rate case application on December 20, 2017, which was assigned Docket No. 2017-0363.<sup>19</sup> Young Brothers filed approximately 1,900 pages of amended and supplemental supporting documents following its filing of the initial application, which the Commission found substantively modified the amount and evidence in support of YB's requested rate increase.<sup>20</sup> YB subsequently re-filed its 2017-0363 Application on March 16, 2018, in which it requested a \$7,842,000 revenue increase, which represented an 11.05% increase over revenues at currently-effective rates, and which it

<sup>18</sup>2016-0014 Stipulated Settlement Agreement at 1, Exhibit A at 1, and Exhibit B at 1.

<sup>19</sup>"Application of Young Brothers, Limited; Exhibits; Direct Testimonies and Exhibits; Work Papers; and Verification, Volumes I through IV," filed on December 20, 2017 ("2017-0363 Application").

<sup>20</sup>See Order No. 35339, "Granting the Parties' Joint Motion and Approving Stipulation," filed on March 14, 2018, at 2-3 (citing "Division of Consumer Advocacy's Second Statement of Position Regarding Completeness of Application," filed on March 1, 2018, at 5 ("[I]t appears that YB's requested increase in revenues has changed from \$9,455,000 or a rate increase of 13.32% (Application) to \$8,685,000 or a rate increase of 12.23% (Response) to \$7,482,000 or a rate increase of 11.05% (Supplemental Information).").

stated was based on an intrastate ROR of 11.09% and an intrastate revenue requirement of \$78,830,233.<sup>21</sup> Young Brothers represented that its requested rate increase was "based on five main drivers: (1) increased rate base; (2) increased operating expenses; (3) continuing decline in shipping volume; (4) increase in proposed cost of capital; and (5) the migration of relative volume from intrastate to interstate cargo."<sup>22</sup> From late-May through mid-July 2018, the Commission held statewide public meetings on YB's 2017-0363 Application.<sup>23</sup>

On August 22, 2018, the Commission adopted, with modifications, the Parties' proposed Stipulated Procedural Order and schedule, which included an evidentiary hearing on

<sup>21</sup>"Refiled Application; Exhibits; Direct Testimonies and Exhibits; Work Papers; Verification; and Certificate of Service," filed on March 16, 2018 ("2017-0363 Application"), at 5.

<sup>22</sup>Docket No. 2017-0363 Application at 6-7. YB notes that "[s]ince the rate case in 2016, Young Brothers has added approximately \$52 million in capital investments." Id. at 7. Additionally, "Young Brothers' operating expenses for the 2018 Test Year have increased significantly, largely due to the overall increase in the cost of doing business, as well as the wage and fringe increases [] resulting from the collective bargaining agreements ("CBA") for Young Brothers' employees." Id. at 9. Further "Young Brothers' shipping volumes are expected to continue declining[,] " id. at 10, and since "non-regulated interstate cargo volumes have declined more rapidly[,] " "the migration of cost from the non-regulated interstate to the regulated intrastate jurisdiction results in a greater cost burden shouldered by the regulated intrastate structure." Id. at 11.

<sup>23</sup>See Affidavits of Publication, Public Meeting Sign-up Sheets, and Written Testimony received in Docket No. 2017-0363.



October 23-25, 2018.<sup>24</sup> Prior to the evidentiary hearing, the Parties filed requests for extensions of time to file a settlement agreement on both September 9, 2018, and October 10, 2018.<sup>25</sup> The October 10, 2018 Letter also stated that as a result of entering into a settlement agreement in principle, "[b]oth parties agree to waive their respective right to an evidentiary hearing . . . ."<sup>26</sup> The Parties then filed their "Stipulation of the Parties for Full Settlement" on October 19, 2018.<sup>27</sup>

YB and the Consumer Advocate described the 2017-0363 Settlement as a formal "memorial[izing] of their proposed global resolution of all the issues in the subject docket,"<sup>28</sup> which "results in an intrastate revenue requirement of \$82,216,970 for the Test Year . . . based on a stipulated 9.56% rate of return on YB's stipulated rate base amount of \$37,916,258."<sup>29</sup>

<sup>24</sup>Order No. 35652, "Adopting the Proposed Stipulated Procedural Order, as Modified, and Addressing Related Matters," filed on August 22, 2018 ("Order No. 35652").

<sup>25</sup>See Letter filed by Young Brothers on September 6, 2018; and Letter jointly filed by Young Brothers and the Consumer Advocate on October 10, 2018 ("October 10, 2018 Letter").

<sup>26</sup>October 10, 2018 Letter at 1.

<sup>27</sup>"Stipulation of the Parties for Full Settlement; and Certificate of Service," filed on October 19, 2019 ("2017-0363 Settlement").

<sup>28</sup>2017-0363 Settlement at 2.

<sup>29</sup>2017-0363 Settlement at 6.

This "results in a required revenue increase of \$3,401,150, or approximately 4.3% of total intrastate revenues at present rates."<sup>30</sup>

The Commission issued a Decision and Order approving the Stipulated Settlement Agreement on February 1, 2019, but noted YB's stated intention to "submit a new application for a general rate case in 2019."<sup>31</sup> As a result, the Decision and Order described the Commission's growing concerns over "the magnitude of the increases in Young Brothers' operating expenses" (directing YB to "improve its efforts to control expenses"), as well as YB's "jurisdictional allocation of expenses."<sup>32</sup> YB's new rates, based on the Stipulated Settlement Agreement, went into effect on February 27, 2019, upon issuance of the Commission's order approving YB's revised tariff sheets and rate schedules.<sup>33</sup> Again, based on YB's active participation in the 2017-0363 Settlement's negotiation and submission, the Commission's presumption was that

<sup>30</sup>2017-0363 Settlement at 6 and Exhibit A at 1 (Revenue Requirement Summary).

<sup>31</sup>Docket No. 2017-0363, Decision and Order No. 36140, filed on February 1, 2019 ("Decision and Order No. 36140"), at 5.

<sup>32</sup>Decision and Order No. 36140 at 5-6.

<sup>33</sup>See Order No. 36188, "Approving Revised Tariff Sheets and Rate Schedules," filed on February 27, 2019, approving YB's revised tariff sheets and rate schedules upon their subsequent filing with the Commission.

YB's agreed-upon rate of return in this rate case was sufficient to meet its future income requirements.<sup>34</sup>

**YB's 2020 Test Year Rate Case:** YB filed its latest rate case application on September 25, 2019, which was assigned Docket No. 2019-0117. YB requests a \$27,000,000 revenue increase, which it states represents a 34% increase above projected revenues at currently-effective rates, which it stated was based on an intrastate ROR of 10.70% and an intrastate revenue requirement of \$105,781,254.<sup>35</sup>

YB recently described that it filed this "request with the PUC [in 2019] to increase its rates to offset rising operating costs and pre-COVID estimated losses of approximately \$13 million."<sup>36</sup> YB's 2019-0117 Application cites "significant" increases in its operating expenses for the 2020 test year, and a decline in shipping volumes,<sup>37</sup> as a basis for its requests for an

<sup>34</sup>2017-0363 Settlement, Exhibit A at 1 (Revenue Requirement Summary).

<sup>35</sup>"Application; Exhibits; Direct Testimonies and Exhibits; Workpapers; Verification; and Certificate of Service," filed on September 25, 2019 ("2019-0117 Application"), at 12.

<sup>36</sup>Press Release: "Young Brothers seeks financial relief from the State due to COVID-19 slowdown," issued on May 26, 2020, available at: <https://puc.hawaii.gov/main/young-brothers-and-consumer-advocate-file-letters-with-the-commission-regarding-young-brothers-financial-situation/>.

<sup>37</sup>Docket No. 2019-0117 Application at 6. YB states that it expects cargo volumes "to remain flat or continue to decline based on macroeconomic factors." Id. at 9-10.

"increase in revenues [of 34% over revenues at present rates] to sustain its financial viability,"<sup>38</sup> "initially identif[ying] an EBIT loss (expenses in excess of revenue at current rates) of approximately \$12.3M."<sup>39</sup> From mid-December 2019 through late January 2020, the Commission held statewide public meetings on YB's 2019-0117 Application.<sup>40</sup>

On February 14, 2020, YB and the Consumer Advocate filed their Joint Stipulated Procedural Order, which included a schedule of proceedings, and a waiver of the statutory six-month decision-making timeframe set forth in HRS § 271G-17(d), explaining that "[g]iven the relative magnitude of the rate relief requested in this docket, as well as the breadth of the issues to be examined [], the Parties recognize that additional time may be required to complete a thorough investigation and for the Commission to issue a final order."<sup>41</sup> The Commission approved YB and the Consumer Advocate's proposed procedural order

<sup>38</sup>Docket No. 2019-0117 Application at 4.

<sup>39</sup>YB "Response to COVID-19 Financial and Procedural Update Request," filed on May 5, 2020 ("YB Financial Update"), citing YB's Docket No. 2019-0117 Application at Exhibit No. YB-707.

<sup>40</sup>See Affidavits of Publication, Public Meeting Sign-up Sheets, and Written Testimony received in Docket No. 2019-0117.

<sup>41</sup>"Division of Consumer Advocacy and Young Brothers, LLC's Joint Stipulated Procedural Order," filed on February 14, 2020, at 3.

on March 6, 2020, setting forth the agreed-upon schedule for the proceeding, which includes an evidentiary hearing that is scheduled to begin on August 25, 2020.<sup>42</sup> On May 19, 2020, noting YB's stated COVID-related "EBIT loss for 2020 of \$22.5M," which is "an additional \$10.2M compared to [its] 2020 Budget[,]"<sup>43</sup> and the ongoing importance of near-term cost reductions given these projected losses, the Commission directed Young Brothers to submit a Cost Reduction Plan, and a Customer Mitigation Plan, in Docket No. 2019-0117.<sup>44</sup>

B.

Young Brothers' Current Financial Condition and  
May 26, 2020 Requests

YB filed its May 26 Letter with the Commission, describing YB's current financial condition as amplified by the COVID-19 Pandemic. YB states that its situation is "extremely dire[,]" and that "unless immediate relief is obtained from the State of Hawaii [] (e.g., CARES Act funding), Young Brothers will

<sup>42</sup>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.

<sup>43</sup>YB Financial Update at 2.

<sup>44</sup>Order No. 37143, "Instructing Young Brothers, LLC to File a Cost Reduction Plan and Customer Service Mitigation Plan," filed on May 19, 2020.

face a cash shortfall very shortly.”<sup>45</sup> YB further states that “the COVID-19 pandemic has caused cargo volumes and associated revenues to drop precipitously, while the Company’s costs remain largely fixed[,]” noting that YB is “projected to lose approximately \$25 million this year . . . .”<sup>46</sup>

YB states that “infusions of cash” from its parent company, Saltchuk Resources, Inc. (“Saltchuk”), “will not be available after May 31, 2020,” and that its “parent company has [already] covered more than \$21 million in losses from 2018 and 2019 . . . .”<sup>47</sup> Noting that “absent immediate relief from the State, [YB] will soon be unable to pay its expenses or continue operations,”<sup>48</sup> YB stated that it intended to file with the Commission:<sup>49</sup>

<sup>45</sup>YB May 26 Letter 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.

<sup>46</sup>YB May 26 Letter at 1. YB cites to cost containment measures it has taken, including adjusting its sailing schedules, reducing its tug workforce, and other G&A cost containment efforts, but states that “no amount of cost-cutting can make us viable in the short-run.” Id.

<sup>47</sup>YB May 26 Letter at 1. The Commission did not find any reference to Saltchuk’s coverage of \$21 million in losses in 2018 and 2019 in any of the final settlement documents filed with the Commission in the 2018 test year rate case (Docket No. 2017-0363).

<sup>48</sup>The “Financial Overview” attached to YB’s May 26 Letter shows a May 26 Forecast projected net revenue loss of \$24,816,411.

<sup>49</sup>YB May 26 Letter at 2.

- (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;
- (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;<sup>50</sup>
- (3) A request for cost deferral accounting for COVID-19 pandemic related costs and lost revenues, at an unspecified date;
- (4) A request for emergency/temporary rate relief, at an unspecified date; and
- (5) A request for extension of its temporary sailing schedule changes that were originally the subject of YB Transmittal No. 20-0003.<sup>51</sup>

<sup>50</sup>The Commission has received a variety of public comments on this, to-date, available at: <https://puc.hawaii.gov/main/young-brothers-and-consumer-advocate-file-letters-with-the-commission-regarding-young-brothers-financial-situation/>.

<sup>51</sup>This request was filed with the Commission on May 28, 2020, 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 above.

C.

Consumer Advocate's May 26, 2020 Letter

On May 26, 2020, the Consumer Advocate filed a letter with the Commission, recommending that the Commission consider two actions:<sup>52</sup>

- (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.

Regarding its first request, the Consumer Advocate argues that "[b]esides the dynamic situation that is rendering most of [YB's] projected cargo volumes moot, there are other factors that should put downward pressures on the need for a rate increase, such as the recently approved reduction in YB's sailing schedule and reduction in gate hours[,]”<sup>53</sup> and that, in addition, “the Consumer Advocate believes that any relief from a general rate increase may not address YB's situation in a timely fashion.”<sup>54</sup>

<sup>52</sup>Consumer Advocate's Letter regarding “Young Brothers, LLC and Ongoing Current Events,” filed on May 26, 2020 (“CA May 26 Letter”), at 1.

<sup>53</sup>CA May 26 Letter at 2, citing to the Commission's Order No. 37128, filed on May 4, 2020, that approved a reduction in YB's sailing schedule for thirty days.

<sup>54</sup>CA May 26 Letter at 2. The Consumer Advocate additionally suggests that YB and the Consumer Advocate may need to “allocate any resources that would otherwise be spent on the general rate



Regarding its second request, the Consumer Advocate notes that "[t]he information that YB's access to financing will be adversely affected at the end of May 2020, which is less than a week away, raises significant concerns and highlights the urgency to address this situation[,]" and that "beyond the reduction in sailing schedules already implemented, there may be other YB operational changes that may adversely affect the services offered to consumers."<sup>55</sup> The Consumer Advocate thus states that "it is important to obtain a better understanding of what measures that YB has been considering in a more comprehensive manner instead of receiving proposed measures in a piecemeal fashion[,]" stressing the importance of finding "an appropriate balance between YB's and its consumers' needs, including measures, for example, that look at changes that are necessary to modify the underlying factors affecting the Company's labor expenses and fixed costs."<sup>56</sup>

In its request that the Commission open an emergency investigative proceeding, the Consumer Advocate recommends a focus on:

increase to the other measures so that timely solutions can be pursued." Id.

<sup>55</sup>May 26 Letter at 4. YB's May 26 Letter states that "there have been no major problems associated with the reduced sailing schedule." YB May 26 Letter at 2.

<sup>56</sup>CA May 26 Letter at 4.

(1) the facts and circumstances around YB's access to financing; (2) YB's most recent financial statement information and an assessment of the impact of any changes in access to financing might have; and (3) a comprehensive identification of the measures that YB has been exploring and evaluating to address its financial condition and the contingency plans that are being developed to address its situation.<sup>57</sup>

D.

YB's May 28, 2020 Response

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."<sup>58</sup> YB further requests that the Commission suspend "other Commission directives (i.e., Order No. 37143) for a period of 60 days," which would include a

<sup>57</sup>CA May 26 Letter at 4.

<sup>58</sup>"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/>.

temporary suspension of the filing of YB's Cost Reduction Plan and Customer Service Mitigation Plan in Docket No. 2019-0117.

YB further states that it "has no objection to the Commission opening a new investigative and coordinating docket to investigate YB's current financial situation."<sup>59</sup> YB further states that it will produce financial information and contingency plans by May 29, 2020.<sup>60</sup>

## II.

### DISCUSSION

At this time, the Commission intends to address YB's May 29, 2020 business plan, any YB request for cost deferral accounting, and any YB request for emergency/temporary rate relief<sup>61</sup> in the instant docket.<sup>62</sup> The Commission opens this docket, to assess YB's financial condition, explore its current and future access to financing (including CARES Act funding), and to propose

<sup>59</sup>YB May 28 Response at 2.

<sup>60</sup>YB May 28 Response at 2.

<sup>61</sup>The Commission acknowledges that the Consumer Advocate and YB have both suggested the possibility of keeping the Docket No. 2019-0117 rate case open/suspending, rather than closing it and addressing emergency or temporary relief in this or a separate proceeding, which the Commission is open to considering, as well.

<sup>62</sup>The Commission intends to address any YB tariff transmittals in accordance with the usual tariff transmittal process, unless a transmittal is suspended for investigation (at which point it may be incorporated into this docket).

and analyze solutions, but reiterates that the Commission will address these various topics and proposed solutions within the above-described framework of: (1) stabilizing YB's finances; (2) mitigating the effect of YB's current and future financial position on customers; and (3) improving YB's long-term competitive position.

Based on YB's recent admission that it may not be able to maintain reliable service and the critical necessity of continued shipping services to the Neighbor Islands, the Commission may also find it necessary to explore YB's and the Consumer Advocate's positions on bringing alternative service provider(s) into the intrastate water carrier market, consistent with HRS § 271G-10 (Applications for certificates of public convenience and necessity) and/or HRS § 271G-12 (Temporary authority).<sup>63</sup> The need for this exploration will depend on the

<sup>63</sup>The Commission notes that in making amendments to HRS § 271G-10 in 2011 to "to clarify the legislative intent that underlies the existing requirement for a finding of present or future public convenience and necessity for the issuance of a certificate of public convenience and necessity[,]" 2011 Haw. Sess. Laws Act 213, § 1 at 694, the Legislature emphasized that "applications for entry into the regulated water carrier market require in-depth analyses of specific issues of public convenience and necessity to ensure that successful applications serve the public interest and protect communities from the risk of harm." Id. The Legislature added that "a mere recitation of the purported benefits of market competition is not, without specific supporting facts on the record, sufficient to support a finding of present or future public convenience and necessity." Id.

outcome of an expedited investigation into the measures that YB has been exploring and evaluating to address its financial condition, YB's contingency plans, and YB's ultimate access to funding (e.g, from the CARES Act, other State or Federal funding, or private funding), as well as the realistic possibility of stabilizing YB's finances, mitigating the effects of its financial position on customers, and improving YB's long-term competitive position.

A.

Opening the Subject Docket

1. The Commission opens this emergency investigative docket to analyze YB's financial condition, contingency plans, and access to financing, and to address identified requests for relief that have been filed and will be filed in the future, with the Commission.<sup>64</sup>

2. The named parties herein are YB and the Consumer Advocate, pursuant to HRS § 269-51 and HAR § 16-601-62(a).

<sup>64</sup>As discussed above, these include YB's May 29, 2020 business plan, any YB request for cost deferral accounting, and any YB request for emergency/temporary rate relief, with the caveat that if the Commission decides, with input from YB and the Consumer Advocate, that a request for emergency/temporary rate relief should be addressed in Docket No. 2019-0117, it may be addressed there, instead.

3. The Commission invites any interested individual or organization to timely file a motion to intervene or participate in this proceeding within twenty (20) days from the filing date of this Order, in accordance with HAR Chapter 16-601.

4. The Commission has filed YB's May 29, 2020 business plan in the subject docket for further review.<sup>65</sup>

5. The Commission requests a response from the Consumer Advocate on the business plan within 5 business days of the filing of this Order, and intends to schedule a status conference to discuss that business plan, the Consumer Advocate's response, and any associated issues raised, shortly thereafter.

### III.

#### ORDERS

##### THE COMMISSION ORDERS:

1. The Commission opens this emergency investigative docket to analyze YB's financial condition, contingency plans, and access to financing, and to address identified requests for relief that have been filed and will be filed in the future, with the Commission.

<sup>65</sup>Upon review of YB's business plan, the Commission may request that YB file its Cost Reduction Plan and Customer Service Mitigation Plan, originally intended to be filed in Docket No. 2019-0117 (Order No. 37143), in the instant docket.

2. The named parties herein are YB and the Consumer Advocate, pursuant to HRS § 269-51 and HAR § 16-601-62(a).

3. The Commission invites any interested individual or organization to timely file a motion to intervene or participate in this proceeding within twenty (20) days from the filing date of this Order, in accordance with HAR Chapter 16-601.

4. The Commission has filed YB's May 29, 2020 business plan in the subject docket for further review.

5. The Commission requests a response from the Consumer Advocate on the business plan within 5 business days of the filing of this Order, and intends to schedule a status conference to discuss that business plan, the Consumer Advocate's response, and any associated issues raised, shortly thereafter.

DONE at Honolulu, Hawaii JUNE 2, 2020.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

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

APPROVED AS TO FORM:

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

CERTIFICATE OF SERVICE

Pursuant to Order No. 37043, the foregoing order was served on the date of filing by electronic mail, addressed to the following parties. Future orders and other documents in this docket will be served on the date they are uploaded to the Public Utilities Commission's Document Management System and served through the Document Management System's electronic Distribution List.

DEAN NISHINA  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
[dnishina@dcca.hawaii.gov](mailto:dnishina@dcca.hawaii.gov)

JEFFERY T. ONO, ESQ.  
DAVID Y. NAKASHIMA, ESQ.  
WATANABE ING LLP  
[JOno@wik.com](mailto:JOno@wik.com)  
[DNakashima@wik.com](mailto:DNakashima@wik.com)

Counsel for YOUNG BROTHERS, LLC

JEREMIAH ANA  
PRESIDENT  
YOUNG BROTHERS, LLC  
[jana@htbyb.com](mailto:jana@htbyb.com)

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