

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
YOUNG BROTHERS, LIMITED)
For Approval of a General Rate)
Increase and Certain Tariff)
Changes)
_____)

DOCKET NO. 2016-0014

DECISION AND ORDER NO. 34535

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PUBLIC UTILITIES
COMMISSION

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OF THE STATE OF HAWAII

In the Matter of the Application of)
YOUNG BROTHERS, LIMITED) Docket No. 2016-0014
For Approval of a General Rate) Decision and Order No. **34535**
Increase and Certain Tariff)
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_____)

DECISION AND ORDER

By this Decision and Order, the commission approves an increase in intrastate freight revenues of \$88,000, or approximately 0.12 percent, over intrastate revenues at present rates of \$72,042,526.¹ This represents an increase in Young Brothers' intrastate revenue requirement to \$72,130,526 for the 2016 adjusted test year. As agreed to by the Parties, the \$88,000, or 0.12 percent rate increase, is "to be applied on an equal percentage basis across each rate element within the Young Brothers' Limited Local Freight Tariff No. 5-A."

In doing so, the commission approves, in part, the Stipulated Settlement Agreement jointly filed by Young Brothers and the Consumer Advocate. However, the commission declines to

¹The Parties are YOUNG BROTHERS, LIMITED ("Young Brothers" or "YB") and the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate").

ratify or adopt the Parties' various stipulated supporting figures and calculations, due to the commission's reservations with certain ratemaking methodologies employed by the Parties and the adequacy of certain evidentiary support in the docket record. Insofar as Young Brothers has expressed its desire to submit a new application for a general rate case in 2017, Young Brothers may resubmit such matters for commission consideration in any forthcoming rate case.

I.

BACKGROUND

On April 12, 2016, Young Brothers filed its Application for Approval of a General Rate Increase and Certain Tariff Changes, which requested approval of an across-the-board general rate increase of 4.36 percent, for an increase in revenues of \$3,135,000, based on an intrastate rate of return of 10.25 percent and an intrastate revenue requirement of \$75,019,721.²

Young Brothers contended that the "need for rate relief" is "driven primarily by two ratemaking components, i.e., (a) cargo volume forecasts[,] and (b) certain increased operating expenses."³

²Application of Young Brothers, Limited for Approval of a General Rate Increase and Certain Tariff Changes, Exhibits, Direct Testimonies and Testimony Exhibits, Work Papers, Verification, and Certificate of Service, filed on April 12, 2016 ("Application"), at 10.

³Application at 13.

Young Brothers stated that the proposed general rate increase "cover[s] rising operating expenses in the face of only fairly muted projected cargo volume growth."⁴

The increased operating expenses were identified as: (a) "Labor Costs" arising from [YB's] latest collective bargaining agreements with employee unions[,] (b) "Shared Services Expenses," which include a "more realistic, accurate, and updated allocation of expenses for shared services provided by YB's corporate parent[,] and (c) the "[h]igher cost of dry-docking YB's vessels, which must now be done on the U.S. mainland."⁵

The term "shared services" is explained as the "services shared among the [Foss Maritime Company] corporate family" that "are performed on Young Brothers' behalf" "such as payroll, accounting, information technology, and legal services, among other shared services."⁶ Young Brothers seeks approval of \$2,499,970 "[f]or the intra-state [Foss Maritime Company] shared services allocation[,] in comparison to \$498,000 of shared services which was approved in Young Brothers' last rate case, Docket No. 2010-0171."⁷

⁴Application at 16.

⁵Application at 18.

⁶Application at 51.

⁷Application at 24.

On May 26, 2016, the commission filed Order No. 33729, which suspended Young Brothers' Application and opened an investigation to examine the merits of the Application.

A Notice of Public Meetings was published in various newspapers statewide, and the commission held public meetings in July 2016 to receive in-person comments from the general public as to the proposals in Young Brothers' Application.

On August 24, 2016, the Consumer Advocate filed its Direct Testimonies and Exhibits. The Consumer Advocate's witness testified, in summary, that "if all of the [Consumer Advocate's recommended] adjustments . . . are approved[,]""⁸ Young Brothers' "intrastate freight rates should be reduced by \$4.15 million, or approximately 5.9 percent[,]""⁹ and "[t]his rate change should be implemented on the same across the board basis as Young Brothers proposes for its recommended rate increase[.]""¹⁰

On September 16, 2016, Young Brothers filed its rebuttal testimonies and exhibits.

On September 22, 2016, the commission approved the Parties' "voluntary and intentional waiver of the six-month

⁸Direct Testimonies and Exhibits of Michael L. Brosch on behalf of the Division of Consumer Advocacy, Testimony CA-T-1, filed on August 24, 2016 ("CA-T-1"), at 6.

⁹CA-T-1 at 4-5.

¹⁰CA-T-1 at 5.

deadline for the issuance of the commission's final order in this docket" and ordered that the "evidentiary hearing previously scheduled for September 27-29, 2016, shall be continued to January 10-12, 2017."¹¹ Subsequently, at the Parties' request, the commission again continued the evidentiary hearing from January 10-12, 2017, to March 7-9, 2017.¹²

The commission granted extensions for the Parties to submit their proposed settlement agreement or stipulation, if any, on some or all of the issues.¹³ For any proposed settlement or stipulation, the commission instructed that "the Parties' justification and evidence in support must 'fully explain[] and provide[] the supporting bases (calculations, worksheets, data, and all other evidence) or other rationale to justify and support a commission finding that the proposed revenue requirements (revenues, expenses, rate base, and rate of return) set forth in their Stipulation are just and reasonable."¹⁴

¹¹Order No. 33935 "GRANTING THE PARTIES' JOINT MOTION AND APPROVING STIPULATION[,]" filed on September 22, 2016, at 16-17.

¹²Order No. 34155 "GRANTING THE PARTIES' JOINT MOTION AND APPROVING STIPULATION, AS MODIFIED," filed on November 30, 2016.

¹³See Order No. 34336 "GRANTING THE PARTIES' JOINT REQUEST FOR EXTENSION OF TIME," filed on January 12, 2017; Order No. 34369 "ADDRESSING THE PARTIES' JOINT REQUEST FOR EXTENSION OF TIME[,]" filed on January 31, 2017 ("Order No. 34369").

¹⁴Order No. 34369 at 2.

On February 3, 2017, Young Brothers and the Consumer Advocate filed a "JOINT MOTION FOR APPROVAL OF STIPULATED SETTLEMENT AGREEMENT" ("Joint Motion") and "STIPULATED SETTLEMENT AGREEMENT" ("Stipulation").

The Stipulation provides that the Parties "agree to recommend and support Commission approval of the following terms and conditions in order to resolve all disputed issues" in Docket No. 2016-0014,¹⁵ which include, among other things:

(1) "Young Brothers and the Consumer Advocate agree that an intrastate freight rate annual revenue increase of \$88,000 is reasonable and should be approved by the Commission, to be applied on an equal percentage basis across each rate element within the Young Brothers' Limited Local Freight Tariff No. 5-A";¹⁶

(2) Young Brothers agrees to prepare a cost allocation manual, and agrees to certain changes or improvements to its rate case filing requirements and the information submitted in support of future applications for a general rate increase;¹⁷ and

(3) "The Parties agree to waive the remaining procedural steps and requirements of the procedural orders and schedule in

¹⁵Stipulation at 1.

¹⁶Stipulation at 1.

¹⁷Stipulation at 2-3, Attachment A.

this docket from December 28, 2016 forward, including waiving of the evidentiary hearing scheduled for March 7-9, 2017."¹⁸

In the Joint Motion, the Parties state that they "were able to resolve their differences which culminated in the Stipulation"¹⁹ and request that the commission issue an order:

- (1) approving the attached [Stipulation];
- (2) waiving the remaining procedural steps and requirements of the procedural orders and schedule from December 28, 2016 forward, including waiving of the evidentiary hearing scheduled for March 7-9, 2017; and (3) granting an extension of time to file the supporting documentation to the Stipulation by and including February 28, 2017[.]²⁰

On February 13, 2017, the commission approved the Parties' "voluntary and intentional waiver of the evidentiary hearing and certain pre-hearing and post-hearing filings," granted the Parties an extension of time to file the Stipulation's supporting documentation by February 28, 2017, and reserved ruling as to the merits of the Stipulation.²¹

The commission stated that it "will consider all matters in the docket record, including any pre-filed testimony and exhibits, responses to information requests, the Stipulation and

¹⁸Stipulation at 3.

¹⁹Joint Motion at 2.

²⁰Joint Motion at 1.

²¹Order No. 34389 "ADDRESSING THE PARTIES' JOINT MOTION FOR APPROVAL OF STIPULATED SETTLEMENT AGREEMENT[.]" filed on February 13, 2017 ("Order No. 34389"), at 1.

supporting documentation, and public comments[,]” and the “review of the Stipulation and disposition of the issues in this docket will involve the application of HRS Chapter 271G, including HRS §§ 271G-16, 271G-17, and 271G-23, and the commission may approve, reject, or modify the Stipulation’s terms, in whole or in part, based on the docket record and applicable law.”²²

On February 28, 2017, the Parties jointly filed a transmittal letter, with Exhibits A-G in support of the Stipulation (“February 28, 2017 Letter”). The Parties agreed “to an increase in YB Intrastate Freight revenues in the amount of \$88,000, or by 0.12 percent, over revenues of \$72,042,526 at current rates for the 2016 adjusted test year[.]”²³ The Parties described the Stipulation as “a reasonable and fair result” and stated in part:

[T]he Parties are submitting their own models of the determination of the Company’s revenue requirements. . . . While some of the underlying detailed numbers may be slightly different, due to rounding, different classifications, and/or modelling, both approaches come to the same conclusions (1) that the Company’s intrastate revenues at present rates is approximately \$78,821,155, (2) that total intrastate operating expenses is approximately \$73,709,783, (3) that average rate base is approximately \$37,549,516, (4) that rate of return on rate base is 9.56%, and (5) that the Company is entitled to a rate increase of approximately \$88,000.²⁴

²²Order No. 34389 at 9.

²³February 28, 2017 Letter, Exhibit A at 1.

²⁴February 28, 2017 Letter at 3. The \$88,000 would increase Young Brothers’ intrastate revenue requirement to \$72,130,526

II.

DISCUSSION

Upon review of the record and the submissions of the Parties, the commission finds and concludes as follows:

1. "The general rule is that in requesting rate increases, the burden of proof is on the utility to go forward with the evidence and justify its requested rate increases."²⁵ "[A]greement between the parties in a rate case cannot bind the PUC, as the PUC has an independent obligation to set fair and just rates and arrive at its own conclusions."²⁶

2. "It is the Commission that is authorized to fix 'just and reasonable' rates to be charged by public utilities[.]"²⁷

for the 2016 adjusted test year. Id. at Exhibit B. The stipulated intrastate total operating revenue, which would include revenue from general excise tax, and cargo insurance revenue, is approximately \$78,821,155.

²⁵Application of Hawaii Elec. Light Co., Inc., 60 Haw. 625, 637, 594 P.2d 612, 621 (1979) ("HELCO"); Hawaii Revised Statutes ("HRS") § 271G-17(d) ("At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.").

²⁶Application of Hawaiian Elec. Co., Inc., 5 Haw. App. 445, 447, 698 P.2d 304, 307 (1985).

²⁷Application of Hawaiian Tel. Co., 67 Haw. 370, 379, 689 P.2d 741, 747 (1984).

Hence, "the reasonableness of rates is not determined by a fixed formula[,]""²⁸ and the "methodology employed by the PUC in its rate-making determination lies within its expertise and discretion."²⁹ "[T]he ratemaking function involves the making of 'pragmatic' adjustments and there is a 'zone of reasonableness' within which the Commission may exercise its judgment."³⁰

3. HRS § 271G-16(c) states in relevant part that "[a]ll charges made for any service rendered by any water carrier in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful."

4. In addition, HRS § 271G-23(a) provides:

Hearings. (a) All hearings, investigations, and proceedings shall be governed by chapter 91 and by rules of practice and procedure adopted by the public utilities commission, and in the conduct thereof, the technical rules of evidence need not be applied; provided that in all evidentiary hearings conducted pursuant to chapter 91 in which a carrier has the burden of justifying the reasonableness of its rates, fares, charges, or classifications, the burden of proof of the carrier in proving the reasonableness of expenditures, contracts, leases, or other transactions between the carrier and corporate affiliates of the carrier

²⁸HELCO, 60 Haw. at 636, 594 P.2d at 620.

²⁹Application of Hawaii Elec. Light Co., 67 Haw. 425, 431, 690 P.2d 274, 279 (1984).

³⁰Hawaiian Tel., 67 Haw. at 382, 689 P.2d at 749 (ellipsis and brackets omitted).

shall be satisfied only if the reliable, probative and substantial evidence is clear and convincing. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission.

5. With respect to the review of expenditures or transactions between the utility and corporate affiliates, "[t]he mere fact that [utility] and [affiliate] have common corporate parentage 'does not in and of itself constitute a badge of fraud or prove prima facie that the use of intercompany price quotations has resulted in a distorted or inflated appraisal.'"³¹

6. However, "[c]harges arising out of intercompany relationships between affiliated [sic] companies should be scrutinized with care[.]"³² "[I]nflated charges to operating company may be a means to improperly increase the allowable revenue and raise the cost to consumers of utility service as well as the unwarranted source of profit to the ultimate holding company."³³

³¹Application of Hawaiian Tel. Co., 65 Haw. 293, 303, 651 P.2d 475, 483 (1982), *overruled in part on other grounds*, Camara v. Agsalud, 67 Haw. 212, 215, 685 P.2d 794, 796 (1984).

³²Boise Water Corp. v. Idaho Pub. Utils. Comm'n, 555 P.2d 163, 168 (Idaho 1976). See also HRS § 271G-23(a); Turpen v. Okla. Corp. Comm'n, 769 P.2d 1309, 1321 (Okla. 1988) ("It is transactions between the utility and its affiliates and the allocation of expenses by the parent holding company to the regulated utility that provide an opportunity for abuse and must be investigated thoroughly.").

³³Gen. Tel. Co. of The Nw., Inc. v. Idaho Pub. Utils. Comm'n, 712 P.2d 643, 651 (Idaho 1986).

In reviewing such "intercompany dealings[,] " "if there is an absence of data and information from which the reasonableness and propriety of the services rendered and the reasonable cost of rendering such services can be ascertained, the allowance is properly refused."³⁴

7. The commission approves as just and reasonable, the Parties' stipulated increase in intrastate freight revenues of \$88,000, or a 0.12 percent increase in rates "to be applied on an equal percentage basis across each rate element within the Young Brothers' Limited Local Freight Tariff No. 5-A."³⁵

8. The commission agrees with the Parties that the "stipulated rate increase of 0.12 percent is very modest in amount,"³⁶ in relation to Young Brothers' originally proposed across-the-board general rate increase of 4.36 percent, for an increase in revenues of \$3,135,000,³⁷ and when also compared to the Consumer Advocate's previous proposal in its Direct Testimonies

³⁴Kiawah Prop. Owners Group v. The Pub. Serv. Comm'n of S. Carolina, 593 S.E.2d 148, 151 (S.C. 2004); Docket No. 6531, In re Hawaiian Elec. Co., Inc., For Approval of Rate Increases and Revised Rate Schedules and Rules, DECISION AND ORDER No. 11317, filed on October 17, 1991, at 66, 128 P.U.R.4th 471 ("Any examination of the reasonableness of the budgeted common costs [to the utility-subsidiary] requires a review of [parent company's] books and records.").

³⁵Stipulation at 1; February 28, 2017 Letter, Exhibit A at 1.

³⁶February 28, 2017 Letter, Exhibit A at 1.

³⁷Application at 10.

that Young Brothers' "intrastate freight rates should be reduced by \$4.15 million, or approximately 5.9 percent[.]"³⁸

9. However, the commission declines to ratify or adopt the Parties' various stipulated supporting figures and calculations, due to the commission's reservations regarding certain ratemaking methodologies employed by the Parties and the adequacy of certain evidentiary support in the docket record.³⁹ Such figures are not adopted by the commission.⁴⁰ As Young Brothers has expressed its desire to submit a new application for a general

³⁸CA-T-1 at 4-5.

³⁹In particular, the commission has reservations about the Parties' ratemaking methodology and the adequacy of the docket record to support a finding of reasonableness for the Parties' stipulated "inclusion of \$2,108,503 of FMC shared services costs to be included in the development of YB's intra-state revenue requirement[.]" February 28, 2017 Letter, Exhibit A at 16, the "allowance of \$200,000 . . . in the development of its settlement-adjusted intrastate cost of service to reflect additional outside services expense to facilitate the development of an FMC Shared Services Cost Allocation Manual, an Intrastate Jurisdictional/Class Cost of Service Cost Allocation Manual, as well as all other reporting and study requirements[.]" id. at 18, and Young Brothers' proposed expense of "approximately \$500,000 . . . for Outside Services expense 'to cover the cost of a program to combat the consolidation and transport of intrastate cargo in interstate stop-in-transit, or SIT, containers.'" Id. at 12-13.

⁴⁰Although certain stipulated expenses, or stipulated increases in expenses, may not be borne by Young Brothers' ratepayers in the absence of express commission approval, the commission observes that by approving the Parties' stipulated rate increase of 0.12 percent, or \$88,000, Young Brothers will nonetheless be afforded the opportunity to recover its stipulated intrastate revenue requirement.

rate case in 2017, Young Brothers may resubmit such matters for commission consideration in any forthcoming rate case.

10. The commission approves that part of the Stipulation, whereby Young Brothers agrees to prepare a cost allocation manual, and agrees to certain changes or improvements to its rate case filing requirements and the information submitted in support of future applications for a general rate increase.⁴¹

11. In light of the commission's disposition of this docket and Young Brothers' reclassification and resubmittal of previously redacted materials, the Consumer Advocate's pending Motion to Reclassify Certain Information Designated as Confidential Pursuant to Protective Order No. 33657, filed on April 20, 2016, is dismissed as moot.

12. As requested by Young Brothers, the commission's examination of Young Brothers' performance metrics and standards, originally commenced in Docket No. 2013-0032, will be continued to Young Brothers' next general rate case.⁴²

⁴¹See Stipulation at 2-3, and Attachment A.

⁴²See Docket No. 2013-0032, Young Brothers' Status Update on Performance Metrics and Standards for the Annual Freight Rate Adjustment ("AFRA") Pilot Program, filed on March 14, 2017, at 2 ("YB instead proposes that the next update on the AFRA Metrics and Standards be provided in and filed with Young Brothers' next base rate application. This will enable the Commission to review the results of YB's performance as part of and in connection with Young Brothers' next rate case.").

13. The methodologies used by the Parties in reaching their global settlement, as well as the commission's partial approval of the Stipulation, may not be cited as precedent by any parties in future commission proceedings.

III.

ORDERS

THE COMMISSION ORDERS:

1. The Parties' Joint Motion and Stipulation, filed on February 3, 2017, is approved in part.

2. Young Brothers may increase its rates to produce a total annual intrastate revenue increase of \$88,000, or approximately 0.12 percent over intrastate revenues at present rates of \$72,042,526, representing an increase in Young Brothers' intrastate revenue requirement to \$72,130,526 for the 2016 adjusted test year. As agreed to by the Parties, the \$88,000, or 0.12 percent rate increase, shall "be applied on an equal percentage basis across each rate element within the Young Brothers' Limited Local Freight Tariff No. 5-A."

3. Young Brothers shall promptly file its revised tariff sheets and rate schedules for the commission's review and approval, which implement the above-mentioned increase in rates. Such filing shall not take effect without the commission's affirmative approval.

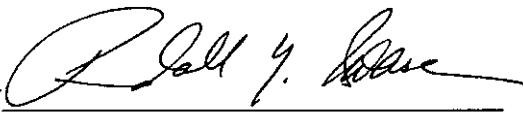
4. The commission declines to ratify or adopt the Parties' various stipulated supporting figures and calculations. Young Brothers may resubmit such matters for commission consideration in any forthcoming rate case.

5. The commission approves that part of the Stipulation, whereby Young Brothers agrees to prepare a cost allocation manual, and agrees to certain changes or improvements to its rate case filing requirements and the information submitted in support of future applications for a general rate increase.

6. The Consumer Advocate's pending Motion to Reclassify Certain Information Designated as Confidential Pursuant to Protective Order No. 33657, filed on April 20, 2016, is dismissed as moot.

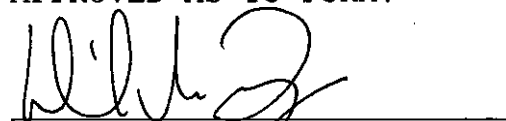
DONE at Honolulu, Hawaii MAY - 4 2017 .

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Randall Y. Iwase, Chair

By 
Lorraine H. Akiba, Commissioner

APPROVED AS TO FORM:


David S. Taga
Commission Counsel

By 
Thomas C. Gorak, Commissioner

2016-0014.ncm

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing and properly addressed to the following parties:

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