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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.	)	

DIVISION OF CONSUMER ADVOCACY'S RESPONSE TO YOUNG BROTHERS, LLC'S BUSINESS PLAN DATED MAY 29, 2020

Pursuant to Hawaii Public Utilities Commission ("Commission") Order No. 37161 Instituting An Emergency Investigative Proceeding Regarding Young Brothers, LLC's Financial Condition filed on June 2, 2020 ("Order No. 37161"),[1] the Division of Consumer Advocacy ("Consumer Advocate") submits this response to the business plan filed by

1 Order No. 37161, at 24 and 25 (Ordering Paragraph No. 5).

Young Brothers, LLC ("Young Brothers," "YB," or the "Company") on May 29, 2020 ("Business Plan").[2]

I. BACKGROUND.

On September 25, 2019, YB filed a general rate increase application seeking to increase rates by approximately 34%. In the course of reviewing the Company's application, YB informed the Consumer Advocate that the COVID-19 pandemic was exacerbating YB's financial situation and that YB's parent company was going to terminate YB's access to financial resources. Based on that information, the Consumer Advocate was concerned about the Company's ability to continue to provide services and filed a letter on May 26, 2020, requesting that the Commission suspend the procedural schedule in Docket No. 2019-0117 so that the Commission, Consumer Advocate, and Company could allocate resources to addressing YB's financial situation in a separate proceeding.

As the Commission indicates in Order No. 37161, the motivation for this investigation and docket arises out of the tumultuous circumstances created by the

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[2] In Order No. 37161, the Commission notes, in footnote 1 of the Order, that Order No. 37161 replaces Order No. 37156 Instituting An Emergency Investigative Proceeding Regarding Young Brothers, LLC's Financial Condition filed on June 1, 2020 ("Order No. 37156") because Order No. 37156 inadvertently included errors on page 5 in a table, requiring the Commission to void and replace Order No. 37156 in order to correct the errors in the document. See Order No. 37161, at 1 (n. 1); see also Order No. 37160 Voiding Order No. 37156, Filed On June 1, 2020 ("Order No. 37160") (filed on June 2, 2020) (stating that the Commission intends to void Order No. 37156 and replace it with Order No. 37161 in proceeding). In Order No. 37160, the Commission acknowledged that Order No. 37161 will contain the corrected figures identified as erroneous in Order No. 37156.

spread of the novel (new) coronavirus and the illness that results from the coronavirus, COVID-19, across the State, country, and the world.[3]

> . . . 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. 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.[4]

In Order No. 37161, the Commission discusses, among things, the factual and other related material motivating YB to make certain requests to the Commission at this moment in time[5] and acknowledges the recent financial performance of Young Brothers in terms of its financial returns to date.[6]

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3 Cf. Order No. 37161, at 2; see also Order No. 37043 Setting Forth Public Utilities Commission Emergency Filing And Service Procedures Related to COVID-19, filed on March 13, 2020 ("Order No. 37043") (describing the circumstances and reasoning motivating the decision to issue Order No. 37043 to address the emergency filing and other service procedures to be followed by the Commission and those having business with the Commission from the issuance of Order No. 37043 until the Order is terminated by direction of the Commission; further explaining, among other things, the public health background and concerns related to the spread of the novel coronavirus and COVID-19 around the State; also noting that, for the sake of explanation, beginning on March 5, 2020, the Governor of the State of Hawaii (the Honorable David Y. Ige ("Governor")) began issuing emergency proclamations and other orders intending to prevent the spread of COVID-19, and provide emergency relief if necessary, around the State. Since March 5, 2020, there have been numerous additional supplemental emergency proclamations and other orders issued by the Governor, the mayors of the City and County of Honolulu, County of Kauai, County of Maui, and County of Hawaiʻi (the Big Island) directing people to remain in their residences or places of habitation in order to prevent the spread and/or contain the presence of the coronavirus and COVID-19 throughout the State).

4 Order No. 37161, at 2 (footnote omitted).

5 See Order No. 37161, at 4-21 (discussing, for example, the Company's request to explore an emergency relief package and/or support to maintain YB's operations over the duration of the next several months, until the end of 2020).

6 See Order No. 37161, at 4-15 (illustrating YB's financial performance from 2015 to 2020, as projected currently).

On May 29, 2020, Young Brothers filed an informational letter – YB's Business Plan – responding to the Consumer Advocate's request for facts and supplemental information raised by the Consumer Advocate's May 26, 2020 letter.

II. YB NEEDS TO IMMEDIATELY PROVIDE ADDITIONAL INFORMATION.

At the outset, the Consumer Advocate notes that its responses to YB's Business Plan are not intended to be, nor should be they be taken as, a comprehensive or complete analysis of the merits or reasonableness of YB's Business Plan. Since receiving YB's Business Plan, the Consumer Advocate has been requesting supporting information that has not yet been made available. The Consumer Advocate, through this response, simply provides the Commission with its response to the Business Plan but it should be made clear that additional analysis and measures are required.

As set forth in the Consumer Advocate's May 26, 2020 letter, resources should be directed to: 1) evaluate YB's financial situation; 2) YB's plans to address the situation; and 3) consideration of the relief that can be implemented in a more timely manner than a general rate increase. Given the short notice that YB's access to funding would be terminated, the Consumer Advocate believed then, and continues to believe, that it is necessary to understand what contingency plans YB has considered and developed to address the current situation, rather than facing a number of piecemeal tariff transmittals that might result in further service reductions.[7] This might also help avoid customer

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7 For instance, YB filed transmittal 20-0003 seeking to reduce sailings to certain neighbor islands. In addition, in its May 29, 2020 letter, YB states its intention to further reduce the services offered to consumers by suspending less than container load shipments to certain ports.

frustrations and confusion that might occur due to multiple changes to the sailing schedule and/or services.

To date, the Consumer Advocate does not believe that YB has provided sufficient information to allow the Commission and the Consumer Advocate to make fully informed evaluations and decisions. For instance, in Transmittal 20-0003, the Consumer Advocate offered conditional support for the requested relief, which included the requirement that additional information that would allow the Commission and Consumer Advocate to evaluate whether the proposed sailing schedule modifications were reasonable, the level of consumer outreach, the potential impacts on consumers and whether there may be cargo that might not be timely transported, what kind of metrics were being evaluated to support a reduction in sailing schedule, and what benchmarks would justify a return to the original schedule. The Consumer Advocate contends that, even in YB's most recent filings in Transmittal 20-0003, which included a request to further modify the sailing schedule, YB has not provided the requested information.

Furthermore, the Consumer Advocate contends that, while YB's Business Plan was filed on May 29, 2020, it does not provide sufficient information to evaluate whether adequate contingency plans, with supporting detail, have been provided to assure the Commission and the Consumer Advocate that YB is a going concern and that customer service will not be further adversely affected. In recognition that YB was most likely responding to a dynamic situation, the Consumer Advocate recommended that YB provide whatever it had as of May 29, 2020 and, once the Consumer Advocate reviewed that May 29, 2020 letter, the Consumer Advocate sought additional information, such as the underlying support for the 13-week cash forecast. That information has not yet been provided. Based on discussion with other state agencies, the Consumer Advocate understands that those other agencies are also seeking information to address the situation. This highlights the need for the relevant information to be quickly made available so that solutions to the current situation can be developed.

III. THERE SHOULD BE A MORE ROBUST PORTFOLIO OF CONTINGENCY PLANS.

After reviewing the May 29, 2020 letter, the Consumer Advocate is troubled. Given the apparent urgent nature of the situation, the Consumer Advocate contends that there should be a more robust portfolio of contingency plans in place to anticipate the dynamic and uncertain nature of what Hawaii and the world is currently experiencing as a result of the COVID-19 pandemic. The Consumer Advocate anticipates that this comment will come as no surprise to the Company since, in recent discussions with YB, the Consumer Advocate has been urging the Company to make clear whatever plans it has developed thus far so that the Consumer Advocate and the Commission might be able to better assess the situation and potential regulatory actions that might need to occur. In those same discussions, the Consumer Advocate raised the need to have a portfolio of potential measures that would address short-term needs (e.g., urgent measures that might be necessary to ensure that services continue uninterrupted and to provide more time for measures that might require more time), mid-term needs (e.g., measures that might take more time to implement, initiate organizational and operational changes, replace short-term measures that might not be favorable in the long-run), and long-term needs (e.g., measures that need an even longer time to implement, continuation of organizational and operational changes, further replacement of short- and mid-term measures that might not be favorable in the long run, and a deeper dive into other measures needed to ensure that customer services can be maintained).

The Consumer Advocate contends that YB's Business Plan does not appear to be consistent with expectations. YB's Business Plan sets forth that its portfolio of measures consists of:

- COVID-19 regulatory tracking mechanisms
- Emergency or temporary rate relief
- Partial suspension of less than container load ("LCL") and mixed cargo services
- Seeking CARES funding in the amount of $25 million
    - If the entirety of the requested amount is received, YB contends that this amount would be sufficient to operate through the end of only 2020. YB would also seek emergency/temporary rate relief that would depend on the amount of CARES funding made available. YB would not seek additional immediate sources of financing but anticipates seeking permanent rate relief, regulatory flexibility, long-term financing, and the other measures already mentioned (e.g., regulatory tracking mechanisms).
    - If the CARES funding is delayed (but this appears to still assume that $25 million would be provided), YB would take "drastic steps" that would include prioritization of emergency/temporary rate relief, other regulatory actions (that are not clearly identified) sooner rather than later, and other financing sources. YB also offers that it might

explore the sale of certain assets, starting with less critical assets. YB would also be working with vendors to renegotiate rates, ask forgiveness of existing liabilities, and/or deferral of payments. YB emphasizes the continued need for permanent rate relief as well as the reduction of current services.

- If the CARES funding is denied, YB's plans appear to be an acceleration of what was identified above.

A. IT IS NOT CLEAR THAT YB WILL RECEIVE $25 MILLION OF CARES FUNDS AND SHOULD BE DEVELOPING MORE DETAILED CONTINGENCY PLANS.

As a general observation, it appears that YB's primary planning has centered around the expectation that YB will have access to CARES funding to cover the anticipated losses in 2020 but the Consumer Advocate contends that this expectation may be unreasonable. To explain, it is the Consumer Advocate's understanding that the CARES funding is for COVID-19 related expenses and that pre-existing expenses or lost revenues will not be sufficient justification for CARES funding access. Based on that understanding, the Consumer Advocate offers the following analysis to support the notion that a more robust portfolio of measures should be developed since the expectation that YB will receive $25 million of CARES funding is unreasonable.

As the graph below illustrates, YB had been profitable until the 2017/2018 time period, when a combination of factors started to result in reported losses.[8] As the graph

[8] The source of the information is the monthly financial statements filed with the Commission.

clearly demonstrates, the losses started before 2019, which is well before the COVID-19 pandemic began.

[redacted]

The fact that there were pre-existing conditions that contributed to YB's current situation and that the COVID-19 pandemic only exacerbated the situation is also clearly seen in Order No. 37161, where the table on page 5 provides data that reflects operating income until 2017 and that reported losses started to occur in 2018 and were expected to continue through the January 2020 budget but the COVID-19 impact only increased the anticipated losses. That table is presented below.

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

The preexisting condition is also observed in the Company's May 5, 2020 letter, where YB's Attachment 1 illustrates that its 2020 budget anticipated a $12.3 million shortfall (before the COVID-19 pandemic affected Hawaii), that the first quarter results[9] increased the anticipated shortfall by $1.4 million, an additional amount of about $0.2 million was forecasted as non-COVID-19 impact, and about $8.6 million was forecasted as COVID-19 related. YB's May 5 letter provides data that suggest that COVID-19 related costs would be capped at about $8.6 million.[10]

Based on the available facts to date and the understanding that CARES funding would only be available for COVID-19 related costs, YB should not be expecting an infusion of $25 million and should be developing a more robust portfolio of contingency plans.

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9 It should be recognized that the majority of the first quarter should not reflect any COVID-19 impacts since the stay at home order did not happen until mid-March.

10 The $8.6 million would need additional review as it appears to be the net loss that is anticipated to be related to COVID-19 and does not reflect only COVID-19 related costs. This is, again, with the understanding that estimated lost revenues or lost gross margins are not eligible for CARES funding.

B. YB NEEDS TO PURSUE COST CUTTING MEASURES WHILE STILL PRIORITIZING SERVICES TO CUSTOMERS.

When the State's stay-at-home order was issued, essential services were allowed to continue and YB's services were rightfully deemed to be an essential service. Without a reliable means to transport goods between the islands, neighbor island access to necessary food and supplies would be adversely affected. Similarly, the delivery of produce and other goods from the neighbor islands to Oahu would be impaired. When YB initiated actions to restrict public access to mitigate the possible spread of COVID-19, that was also reasonable as similar essential services took similar steps. For instance, just as YB sought to restrict gate hours and impose certain new operating procedures to protect the safety of its employees and customers, electric companies were closing their customer centers to in-person services and suspending meter reading routes in order to protect their employees and customers.

YB must pursue cost cutting measures in order to address its pre-existing condition as well as the COVID-19 related impacts but YB's focus should not be on reducing its services to customers. Given the current economic conditions, the Consumer Advocate continues to reiterate its concerns related to significant price increases such as YB's requested 34% increase in rates or reductions in services. In order to help Hawaii restore its economic health, it will be important for all islands to have affordable interisland shipping costs to facilitate the movement of goods between the islands and not have reduced services at higher prices; this would be contrary to State goals.

1. YB must control and reduce its rapidly expanding costs.

Based on the available information to date, it is clear that YB's costs have been dramatically increasing. For instance, starting with the data included in Order No. 37161, it can be observed that YB has known that its operating expenses will be increasing, where the reported expenses were $105.0 million in 2015 but the budgeted expenses as of January 2020 were expected to be $132.7 million; this is an expected increase of over 26% in that short period. The increase in YB's expenses is more evident after a review of the monthly financial statements filed with the Commission. As shown on the graph below, monthly revenues have been [redacted] during the period from 2013 through 2020 but the monthly expenses have increased from about [redacted] a month to almost [redacted] a month, which is an increase of almost [redacted] during this interval.

[redacted]

A further analysis of potential factors that are driving this observed increase is also provided. The graphs below show the significant increase in A&G and labor cost over that period.

[redacted]

[redacted]

Notwithstanding certain responses in Docket No. 2019-0117[11] and YB's May 29,2020 letter that recently identified certain cost control measures, the Consumer Advocate believes that YB has not fully explored nor adequately addressed the need to control its costs. As evidenced in the referenced data, the significant increases should be addressed but YB's Business Plan does not clearly address this need. In fact, recent data continues to highlight the urgent need to address YB's increasing costs. For instance, in a brief review of the recent monthly financial reports

[11] The Consumer Advocate requested information on YB's cost control efforts (e.g., CA-IR-23) and asked additional questions in the sixth and seventh set of information requests to better understand YB's cost control measures but has not yet received the responses.

filed with the Commission, such as the December 2019 through April 2020 monthly financial statements, the following questions should be addressed:

- Why have 2019 entertainment expenses of $294,000, increased so significantly over 2018 expenses of $55,000?
- Why have office supplies, stationery, and printing expenses increased by approximately 164% (2018: $123,000, 2019: $325,000)?
- Why has maintenance of building and equipment increased by $475,000 (or 23%) in 2019 over 2018 levels?
- Even though YB has indicated that a hiring freeze was in place, why has the number of employees increased by 10 between March and April of 2020?

If cost control is not expeditiously implemented, YB's condition may continue to degrade, regardless of any federal funding made available, rate increases, or other assistance. The Commission should require that these matters be addressed quickly not only so that near-term measures can be more reasonable in scope and to facilitate more focused mid- and long-term solutions but to ensure that customer services are not unreasonably reduced.

2. YB's planned reduction in services is not in the public interest.

As already mentioned, the Consumer Advocate is concerned that, if allowed, YB may further reduce services to customers. As evidenced by Transmittal 20-0003 and YB's stated intention to reduce its LCL services, there is good cause to be concerned with the potential impact that YB's situation may have on customers, but the Consumer Advocate contends that reducing services should not be the first line of measures that are explored and implemented. As raised in the Consumer Advocate's statement of position filed in response to Transmittal 20-0003, it was less than clear that adequate consideration of community outreach preceded that transmittal and subsequent public comments made it clear that the sailing schedule modifications would have potentially significant impacts on customers. As stated in YB's June 3, 2020 letter, the additional requested modification to the sailings schedules was in response to consumer concerns that were raised. The Consumer Advocate urges Young Brothers to also consider the public comments that have already been filed in response to some of its recent filings that indicated YB's intent to reduce its LCL and mixed cargo services. For instance, on May 29, 2020, the Consumer Advocate notes that the Molokai Chamber of Commerce sent a letter stating, "[t]he proposed Phase 2 Contingency Plan's elimination of all LCL cargo system wide would cripple Molokai and strike a devastating blow to our businesses and residents as well."

Furthermore, as already mentioned, the Consumer Advocate anticipates that if YB is allowed to reduce its services, this will likely adversely affect Hawaii's ability to recover from the current COVID-19 pandemic and possibly push already struggling businesses closer to closing their doors. In addition, if YB is allowed to reduce or eliminate certain services, such as LCL, such a move would also be inconsistent with the State's goal of developing further self-sustainability as neighbor island farmers and businesses that seek to send goods might have to rely on higher cost alternatives that might not allow the business models for those neighbor island businesses to continue their operations.

The Consumer Advocates notes that as recently as the Company's 2016-0014 and 2017-0363 rate case applications, YB was asserting that it recognized and took pride in its ability to provide universal service.[12] YB recognized that certain services may not be as efficient as others but that it was YB's mission to provide universal services.[13] Yet, even though YB has historically been able to deliver the universal services that it has for decades at reasonable rates, YB has suddenly incurred significant increases in expenses to provide those services and appears too ready to seek rate increases and decreases in services instead of looking to control its costs. The Consumer Advocate notes that in a May 29, 2020 Star Advertiser editorial, a representative from Saltchuk, YB's parent company, acknowledged that "We lost our way." The Consumer Advocate contends that YB needs to course correct and that correction should not be towards only on assistance from federal or state funds, gradual or significant increases in rates, and/or decreases in customer services; that course correction will require YB to control its costs and to re-examine what its fixed asset needs are so that it can meet customer demand at reasonable prices. Reducing services to customers should be the last option that YB is pursuing if it is focusing on its core function – to serve customers. As a regulated utility or carrier, there is an expectation of being the provider or carrier of last resort and that the regulated company needs to be able to provide service to all customers; hence universal service is expected of the regulated company and the proposed erosion of services should not be contemplated.

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12 See, e.g., YB's application and YB-DT-100 in Docket No. 2016-0014 and YB's application in Docket No. 2017-0363 discussing its commitment to provide universal service.

13 See, e.g., YB's application in Docket No. 2016-0014, at 40, where YB states that, "Young Brothers could be more cost-effective and cost-efficient by maximizing barge capacity utilization and by eliminating, or decreasing the frequency of, cost-inefficient sailings. But then the Company could not provide the frequent, regular, and universal service it currently offers, were it to be driven solely by the objectives of cost effectiveness and cost efficiency."

3. YB's affiliate transactions are suspect.

The Consumer Advocate contends that another aspect of the review may need to closely examine the affiliated arrangements that have supported recommended adjustments in recent rate proceedings. YB's affiliation with Saltchuk Resources adds considerable complexity to the analysis of YB's access to capital. In Young Brothers LLC Financial Statements for 2019, the Company reported a "Net Loss" that reduced its Retained Earnings equity balance by $11.4 million in 2018 and by another $10.2 million in 2019, yet a "Dividend to Parent" was recorded in 2019 further reducing Retained Earnings by $11.3 million. Page 8 of YB's 2019 Financial Statements contain the disclosure, "The Company maintains a series of accounts, most of which sweep nightly to the Parent cash accounts so that cash and credit can be managed centrally by the Parent. As a result, the Company maintains generally lower cash balances than might be expected for an organization of this size." Page 18 explains further, "YB relies on funding from the Holding Company to meet short-term working capital needs, capital expenditures, and other obligations" but does not explain whether and how this arrangement provides sufficient emergency liquidity to YB in times of financial stress. The role of Saltchuk as Parent of YB in controlling and limiting YB's access to capital or precluding YB's ability to separately secure needed capital and liquidity must be understood by the Commission, but is not addressed in the Company's submitted business plan.

YB's operating losses and tax deductions arising from new tug investments should also create significant income tax benefits to Saltchuk that should be understood and considered. Page 8 of YB's 2019 Financial Statements contain the disclosure, "Effective

January 1, 2019, the Company's Parent revoked its S Corporation election and is now treated as a C Corporation for U.S. tax purposes. As part of the change, the Company was converted to a Limited Liability Company and continues to be treated as a pass-through entity for Federal and state income tax purposes for 2019. All the taxable income of the Company is included in the Parent's consolidated taxable income." YB's business plan should quantify the income tax deferral benefits being enjoyed by Saltchuk through this arrangement and provide cash compensation to YB for the consolidated taxpayer's (Saltchuk's) ability to monetize such tax benefits. Such a "benefits for losses" approach to allocation of consolidated income tax benefits would be highly favorable to YB, in place of the "stand-alone" income tax allocation approach favored by the Company.

Related Party Transactions contribute significantly to YB's financial results and are likely to contribute to the Company's current net losses. Page 18 of YB's 2019 Financial Statements indicate the incurrence of expense charges from affiliates for marine services ($3.2 million), shipyard and engineering services ($3.6 million), goods and services (primarily fuel purchases $2.3 million) and insurance expense from Parent group ($4.6 million). These affiliate charges have been controversial in past rate cases and YB's efforts to reduce or eliminate such charges to mitigate its financial losses should be understood by the Commission.

C. YB'S BUSINESS PLAN IS NOT ROBUST.

The Consumer Advocate is concerned that the Business Plan does not reflect sufficient consideration of the dynamic situation facing Hawaii and all of its residents and businesses and the urgent need to find reasonable solutions for YB's situation that will not adversely affect Hawaii's businesses and residents. The Consumer Advocate is concerned with YB's suggestion in its business plan that regulatory flexibility is part of a possible solution. Given the earlier discussion that is offered above, the Consumer Advocate contends that consumers should be wary of granting regulatory flexibility at this time since, if regulatory flexibility (i.e., reduced regulation is allowed), the outcome might be uncontrolled costs, significant rate increases, and reduced services. That is not in the public interest. If, on the other hand, regulatory flexibility means responsiveness by the regulators, the Consumer Advocate agrees with that notion and, to date, the Consumer Advocate contends that both the Consumer Advocate and the Commission have shown that responsiveness.[14]

It is that responsiveness that supports the need to require a more robust portfolio of measures to address the potential situation. The changes observed in YB's January to April budgets highlight that there should be a portfolio of options to address the potential situations where the actual financial results 2020 could be better, worse, or in alignment with YB's most recent budget. Further, the Consumer Advocate contends that YB has not clearly laid out options that should be considered but have not been identified in YB's Business Plan.

For instance, even if YB is not able to receive $25 million in the form of assistance from CARES funding, the Consumer Advocate believes that additional federal assistance may be available. For instance, if YB is viewed as a stand-alone company, assistance

[14] For instance, notwithstanding stated concerns, the Consumer Advocate did not object to the proposed sailing schedule change that was expeditiously approved by the Commission in Order No. 37128 as well as the expeditious response to YB's June 3, 2020 letter that led to the Commission's Order No. 37166 that allowed a further modification of YB's authorized sailing schedule.

through the Payroll Protection Program might have been possible and it is not clear whether YB sought such assistance and, if so, what the results of those efforts were. Similarly, the Consumer Advocate notes that the Federal Reserve Bank has been working to make its Main Street lending program available to assist both small and mid-size companies to address COVID-19 related impacts. It is not clear whether YB has pursued this measure. In addition, there may be other federal programs, such as a federal maritime ship or construction financing, that might provide potential sources of funds.

In addition, while YB references that it may look into commercial lending opportunities, the Consumer Advocate contends that YB should be exploring all options rather than waiting to see whether CARES funding will be available. In fact, the Consumer Advocate has many questions about why YB, with the assistance of financial management services from an affiliated company for which charges are being assessed on YB, did not already have some financing and/or liquidity facility in place. It is not uncommon for businesses to have lines of credit in place to provide cash liquidity and the same is true for regulated companies. In this situation, when YB's parent has intentions to "cut off" YB from cash infusions, even if the intent is to suspend equity infusions, it is not clear why YB was not assisted in accessing the commercial lending and/or credit market.

Along those lines, it may be necessary to review statutory guidelines to determine whether modifications to Hawaii Revised Statutes ("HRS") Chapter 271G may be required to give the Commission express authority to authorize debt financing that may not be consistent with the purposes currently allowed in HRS § 271G-17.5.[15] Further, if the

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[15] As currently set forth in § 271G-17.5, it is the Consumer Advocate's understanding that the proceeds from long-term debt may not be used for operational/maintenance expenses.

Commission may require the authority to temporarily waive other requirements of HRS Chapter 271G or to grant the Commission the appropriate authority in order to pursue reasonable means of addressing YB's current situation, that should be done now while there may still be a window of opportunity to get such legislative changes approved in the current session.

A key issue not addressed in the Company's Business Plan is whether losses being sustained in YB's interstate connecting carrier and charter business operations, which the Company normally treats as "non-jurisdictional" for regulatory purposes and when setting YB's tariff rates, should be subsidized or considered as part of YB's alleged financial emergency. If it is determined to be necessary to provide extraordinary relief for financial stability sufficient to subsidizes losses in both YB's regulated intrastate and its non-jurisdictional interstate businesses, the Commission should address the propriety of allowing YB to treat any future profits from interstate operations as non-jurisdictional if doing so then increases intrastate revenue requirements.

A related issue is the proper attribution of any CARES funding or other public assistance YB may receive between jurisdictions on the Company's books and when setting future rates. It would seem necessary to require YB to record any public assistance received in cash as an intrastate regulatory liability, for which ratemaking treatment is later considered in connection with the evaluation of permanent rate relief for YB, when jurisdictional and other issues can be carefully analyzed. It is essential to carefully condition any public assistance as being prospective relief in support of YB's ongoing intrastate operations, in order to preclude any retroactive application of such subsidies to YB's historical losses or to YB's non-jurisdictional businesses.

The Consumer Advocate has also raised and is considering a number of potential cost saving measures that should be evaluated by the Company, including, but not limited to the following:

- Whether YB has evaluated its maintenance schedules to determine whether those schedules might be modified to reduce immediate cash flow needs and, where such maintenance might be required by state or federal rule, has YB communicated with the appropriate regulatory agency to see if deferral/delay might be possible to help address the current cash flow situation.
- Whether appropriate steps have been taken by YB to reduce the fixed costs of its tug and barge fleet, by examining right sizing cargo capacity to meet current and anticipated demand levels.
- Whether YB has examined reductions in charges from affiliated companies controlled by Saltchuk, in order to reduce its operating losses and cash flow concerns.
- Whether YB is effectively managing the collection of accounts receivables with connecting carriers who collectively represent a significant percentage of total revenues and available cash flow.
- Whether YB has explored the possibility of sales/leaseback transactions or other financing independent of Saltchuk, to take advantage of potentially favorable low interest rates to help with the cash flow situation. In this situation, instead of selling and leasing back the same asset, given the declines in cargo volumes, it may be possible to sell certain assets and

replace those assets with more affordable assets that better meet short- to mid-term forecasted cargo needs.

- Notwithstanding YB's assertion that a hiring freeze is in place, given the observation of the ten employee increase between March and April, further exploration of this might be necessary.
- Whether YB has initiated discussions with its workers to modify work hours to minimize overtime hours and dollars as well as other concessions to reduce expenses.
- Whether YB has negotiated any reductions in allocated administrative charges from Foss or the other affiliated entities referenced above.
- While YB indicates that it might reach out to vendors, depending on the status of CARES funding, there should be an evaluation of the potential impact on short- and mid-term needs and why such efforts should not occur on a parallel track with other efforts.
- Whether YB has investigated revisions to employee benefit programs to reduce the costs of defined benefit pensions or other employee welfare programs.
- Whether YB has explored the possibility of accounts receivable factoring to meet short-term cash flow needs, especially if some of YB's customers who do not pay at time of delivering cargo to be shipped have been delaying payments to YB.

- Whether YB has comprehensively explored the need and ability to modify its interstate connecting carrier services, given current business and market conditions, price elasticity constraints and competitive considerations.

The Consumer Advocate contends that a detailed analysis of YB's situation will be required to help facilitate solutions to address the situation. These efforts will need to start with a better understanding of YB's short-term cash flow needs to design and implement the appropriate measures to allow more time to develop and implement the mid- and long-term solutions. The Consumer Advocate believes that other measures should also be considered by the Commission such as a management audit similar to the one that was recently filed in Docket No. 2019-0085 for Hawaiian Electric could be a valuable tool that identifies potential management, organizational, and process changes that should be made to reduce costs on a going-forward basis.

The Consumer Advocate also contends that, given the situation, the Commission should ensure that appropriate conditions are in place to maximize the likelihood that any financial aid is with the express design of continuing affordable services to customers. Otherwise, the Consumer Advocate is concerned that simply providing CARES funding or other aid may not result in the foundational changes necessary to avoid YB returning at the start of 2021 asking for additional bailout funds. Such conditions are likely to include, but not be limited to, a limitations on how the funds may be used and detailed reporting on how assistance funds are used;[16] matching contributions;[17] commitments to continue all services; YB's commitment to restructure its organization to reduce and control costs; establishing relevant metrics to facilitate internal and external review of YB's financial and operational performance; and YB's commitment to aggressively seek other sources of financing and relief.

IV. CONCLUSION.

The Consumer Advocate anticipates that further investigation and factfinding will occur to ensure that solutions to YB's current circumstances are in the public interest. In this Business Plan, the Consumer Advocate sees YB's attempts at navigating its way through the impacts of COVID-19 over the last several months, especially with respect to the economic effects of the virus. The Consumer Advocate believes that there is much more to be done. Consequently, the Consumer Advocate states that this response should be taken to be the Consumer Advocate's preliminary perspective on YB's Business Plan. The Consumer Advocate anticipates that it will offer further refined comments and recommendations based on further facts and analysis.

It should be made clear, however, that the Consumer Advocate contends that the primary objective is the preservation of reasonably priced services to customers and not the bailout of YB. In order to achieve that preservation, the Consumer Advocate believes

16 It is the Consumer Advocate's understanding that the State will have to provide a detailed reporting to the Federal government to ensure that the CARES funds were used in a manner consistent with guidelines. Otherwise, the State may be required to pay the Federal government back for funds that are deemed to be have been spent in a manner inconsistent with the guidelines.

17 Notwithstanding that the assertion that Saltchuk has indicated it will not provide infusions beyond the end of May, the Consumer Advocate believes it is reasonable to consider imposing a condition that any Federal or State grant or loan be matched by Saltchuk.

that significant work will be required to develop potential solutions to allow not only the immediate continuation of services for the short-term (i.e., beyond the end of July) but to allow customers to expect the continuation of services at reasonable prices to facilitate Hawaii's recovery from the economic impacts of COVID-19 and beyond.

DATED: Honolulu, Hawaii, June 9, 2020.

Respectfully submitted,

By /s/ Dean Nishina
DEAN NISHINA
Executive Director

DIVISION OF CONSUMER ADVOCACY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S RESPONSE TO YOUNG BROTHERS, LLC'S BUSINESS PLAN DATED MAY 29, 2020** was duly served upon the following parties electronically to the e-mail addresses below pursuant to HAR§ 16-601-21(d), as modified by Order No. 37043 Setting Forth Public Utilities Commission Emergency Filing And Service Procedures Related To COVID-19, filed on March 13, 2020.

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DATED: Honolulu, Hawaii, June 9, 2020.

/s/ L. Matsumoto