

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
 YOUNG BROTHERS, LIMITED)
)
 For Expedited Approval to Enter)
 Into a Long-Term Lease of)
 Photovoltaic Equipment.)
 _____)

DOCKET NO. 2008-0253

DECISION AND ORDER

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

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FILED

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OF THE STATE OF HAWAII

In the Matter of the Application of)
 YOUNG BROTHERS, LIMITED) Docket No. 2008-0253
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Into a Long-Term Lease of)
Photovoltaic Equipment.)
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DECISION AND ORDER

By this Decision and Order, the commission approves the request of YOUNG BROTHERS, LIMITED ("Young Brothers" or "YB") for expedited approval to enter into a long-term lease for photovoltaic equipment to power its shore-side maintenance operations, subject to certain conditions, as described herein.

I.

Background

Young Brothers is a water carrier authorized to transport property by barge between the islands of Oahu, Hawaii, Kauai, Maui, Molokai, and Lanai.

A.

Request for Expedited Approval

On September 30, 2008, Young Brothers filed its Application seeking: (1) the commission's expedited approval, by October 3, 2008, to enter into a long-term lease for photovoltaic equipment to power its shore-side maintenance operations; and

(2) a waiver of certain of the filing requirements set forth in Hawaii Administrative Rules ("HAR") §§ 6-61-101(b) and 6-61-75(b).¹ "Young Brothers has selected the photovoltaic equipment and its vendor, Island Pacific Energy LLC (IPE). Central Pacific Bank will purchase the equipment from the vendor and will then lease it to Young Brothers for a term of ten years."²

The equipment lease with Central Pacific Bank is for a term of ten years.³ As explained by Young Brothers: (1) Central Pacific Bank will purchase the photovoltaic equipment from IPE and lease it to Young Brothers; (2) IPE will construct and install the photovoltaic equipment on the rooftop of Young Brothers' maintenance shed at its Honolulu port facilities; and (3) the photovoltaic system will be designed to supply roughly 100 kilowatts ("kW") (alternating current) of electricity to support Young Brothers' shore-side maintenance operations at its Honolulu facilities.⁴

¹Application of Young Brothers for Expedited Approval to Enter into a Long-Term Lease of Photovoltaic Equipment; Exhibits 1 - 4; Verification; and Certificate of Service, filed on September 30, 2008, as supplemented on September 30, 2008 with certain documents filed under confidential seal (collectively, "Application"). Young Brothers served copies of its Application upon the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and HAR § 6-61-62(a). The deadline for interested persons to timely move to intervene or participate in this proceeding is October 20, 2008, pursuant to HAR § 6-61-57(3)(A).

²Application, at 3.

³A copy of the equipment lease is attached as confidential YB-Ex-1 to the Application.

In seeking the commission's expedited approval, Young Brothers represents:

As described more fully below, Young Brothers needs and requests expedited approval because (a) Young Brothers earlier relied on another vendor to complete this project; this vendor was unable to secure adequate financing to complete the project and therefore Young Brothers had to secure (and has just now secured) a new agreement through a new vendor, (b) in order to take advantage of expiring federal tax credits to make this clean energy project affordable (and, in fact, represent a cost savings), the solar photovoltaic equipment must be in service by December 31, 2008, and (c) in order to meet this December 31, 2008 deadline, Young Brothers' new vendor must order the necessary materials within the next week and by October 3, 2008 if at all possible.

Expedited approval of the transaction will allow the parties to the proposed equipment lease to benefit mutually from a federal energy investment tax credit, which is slated to expire at the end of 2008. See, generally, 26 U.S.C. § 48. Under the proposed equipment lease, lessor Central Pacific Bank retains the benefits derived from certain related federal depreciation deductions and investment energy and other tax credits, including applicable State of Hawaii tax credits. These benefits allow the lessor, in turn, to offer Young Brothers a reduced lease rental (which is also less than the cost to [Young Brothers] to purchase electricity from the local power utility). As a result, the proposed equipment lease serves to lower Young Brothers' cost of providing its services, to the benefit of customers.

⁴The purchase price for the equipment and certain other terms of the equipment lease have been filed under confidential seal. See Application, at 12-13. Although unclear, it appears that the photovoltaic system will be designed to operate in parallel with Hawaiian Electric Company, Inc.'s ("HECO") electric utility system. See Application, at 11-12 (Young Brothers' monthly power utilization during 2008 has ranged from approximately 20,000 kilowatt hours ("kWh") to over 23,000 kWh, and the photovoltaic system, designed to supply roughly 100 kW (alternating current) of electricity, will initially generate over 15,000 kWh per month).

To benefit from the federal investment energy tax credit, the photovoltaic equipment must be placed in service before year's end. The equipment vendor has indicated it is capable of installing the photovoltaic unit for placement in service by December 31, 2008, when the current federal investment energy tax credit expires. However, in order to meet this deadline, the vendor must be able to place a shipment order for necessary materials no later than October 3, 2008. The vendor awaits Commission approval, as well as a written financial commitment from Central Pacific Bank before this date. Young Brothers and Central Pacific Bank have begun discussions and are preparing the documentation necessary to close the lease, pending Commission approval.

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An expedited approval by the Commission will give the parties the necessary assurance (1) for Young Brothers and Central Pacific Bank to close the proposed equipment lease, (2) for IPE to begin ordering materials necessary for construction of the photovoltaic equipment, and (3) for Central Pacific Bank to make progress payments to IPE pursuant to an Interim Funding Agreement, a copy of which is included in exhibit YB-Ex-1. Without such expedited review and approval, this solar photovoltaic project will not be possible and Young Brothers and its customers will lose the benefits associated with the proposed equipment lease

Application, at 8, 9, and 11 (footnote and text therein omitted) (emphasis added).

B.

Consumer Advocate's Position

In its Statement of Position filed on October 2, 2008, the Consumer Advocate informs the commission that "it does not object to the Commission's expedited approval of YB's request to enter into the instant proposed lease with Central Pacific Bank for the use of a photovoltaic system at YB's Honolulu harbor

facilities. The benefits to be derived by the lease arrangement are expected to reduce YB's cost of service, and are consistent with the State's energy policy. Furthermore, approval by October 3, 2008 is instrumental to YB's ability to ensure that the photovoltaic system can be installed by December 31, 2008, which was a critical assumption under which the terms of the lease payments were based."⁵ The Consumer Advocate concludes its review with the following recommendation:

. . . . the Consumer Advocate recommends that the Commission require YB to make a notification filing with the Commission, with copy to the Consumer Advocate, at the end of the lease term. The filing should: (1) state whether YB intends to execute its option to purchase the equipment from Central Pacific Bank; (2) the purchase price with support for such price; and (3) the analysis that demonstrates the reasonableness of [YB's] decision to make such purchase.

The above information will provide the Consumer Advocate [with the] opportunity to review the terms of the purchase, assess the impact of the purchase on YB's rate base, and formulate a position on the purchase to be presented in the future rate proceeding in which the purchase price of the photovoltaic system is reflected in YB's test year rate base and resulting requirement.

Consumer Advocate's Statement of Position, at 7.

II.

Discussion

A.

Non-Submittal of Certain Information

From a procedural standpoint, Young Brothers requests a waiver of the filing requirements set forth in

⁵Consumer Advocate's Statement of Position, filed on October 2, 2008, at 9.

HAR §§ 6-61-101(b)(2)(3)(5)(6)(7)(8)(9) and 6-61-75(b)(1)(2). Young Brothers represents that the requirements set forth in HAR § 6-61-101(b)(2)(3)(5)(6)(7)(8) and (9) do not apply to the equipment lease transaction,⁶ and requests that the commission accept the water carrier's unaudited balance sheet and income statements set forth in its monthly and annual reports on file with the commission, in lieu of the audited balance sheet required under HAR § 6-61-75(b)(1).⁷

HAR § 6-61-1 provides that the commission shall liberally construe HAR chapter 6-61 "to secure the just, speedy, and inexpensive determination of every proceeding." Based on Young Brothers' representations, the commission, on its own motion, determines that Young Brothers should not be required to submit the information set forth in HAR §§ 6-61-101(b)(2)(3)(5)(6)(7)(8)(9) and 6-61-75(b)(1)(2).⁸

B.

Equipment Lease

HRS § 271G-17.5 states:

Issuance of securities; execution of leases.

A water common carrier may, on securing the prior approval of the public utilities commission, and not otherwise, issue stocks and stock certificates, bonds, notes, and other evidences of

⁶Application, at 3-6.

⁷See also HAR § 6-61-75(b)(3) (income statement covering the period from the close of the last audited balance sheet).

⁸See, e.g., In re Kauai Island Util. Coop., Docket No. 2008-0068, Decision and Order, filed on August 26, 2008 (waiver of the filing requirements set forth in HAR § 6-61-101(b)(5) to (7), consistent with HAR § 6-61-1).

indebtedness, payable at periods of more than twelve months after the date thereof, and enter into long-term leases of more than three years and leverage leases, for the following purposes and no other, namely:

- (1) For the acquisition of property; or
- (2) For the construction, completion, extension, or improvement of or addition to its facilities or service; or
- (3) For the discharge or lawful refunding of its obligations; or

.

As used herein, "property" and "facilities" mean property and facilities used in all operations of a water carrier whether or not included in its regulated operations or rate base. A water carrier may not issue securities nor enter into long-term leases of more than three years and leverage leases, to acquire property or to construct, complete, extend or improve or add to its facilities or service, if the commission determines that the proposed purpose will have a material adverse effect on its operations. No carrier shall repurchase or reissue its own common stock without prior commission approval.

All stock and every stock certificate, and every bond, note, or other evidence of indebtedness of a water carrier not payable within twelve months, issued without an order of the commission authorizing the same, then in effect, shall be void. In addition, all long-term leases of more than three years and all leverage leases entered into by a water carrier without an order of the commission authorizing the same then in effect shall be void.

HRS § 271G-17.5 (emphasis added).

The equipment lease constitutes a long-term lease of more than three years, and Young Brothers' shore-side maintenance operations in Honolulu constitute facilities used in its water

carrier's operations. Hence, the commission's prior approval of the equipment lease is required under HRS § 269-17.5.

Young Brothers, in support of its request for expedited commission approval, represents:

1. The purpose of the equipment lease is for the "construction, completion, extension, or improvement of or addition to its facilities or service," pursuant to HRS § 269-17.5(2).

2. The photovoltaic system will not have a materially adverse effect on the water carrier's operations, pursuant to HRS § 269-17.5. In particular, "[t]he photovoltaic system is structured to provide solar-generated electricity, with no impact on Young Brothers' ability to draw from the HECO grid. IPE will maintain the system under a 10-year renewable maintenance agreement with Young Brothers, the price of which is also included in the monthly lease expense. From a financial standpoint, unlike a loan, the proposed equipment lease does not require a down payment or a pledge of other assets as collateral. The leased photovoltaic equipment will be expensed, rather than rate-based, to the benefit of Young Brothers' customers."⁹

3. From a cost benefit standpoint, Young Brothers anticipates savings in its electricity expense cumulatively over the projected minimum twenty-year life of the equipment.¹⁰

⁹Application, at 13 (footnote and text therein omitted).

¹⁰See Application, YB-Ex-3, Benefit-Cost Analysis of a 10-Year Solar PV Operating Lease (confidential filing). While the term of the equipment lease is for ten years, the projected minimum life of the photovoltaic equipment is twenty years. This

4. "The proposed project will also help reduce the State's reliance on fossil fuels and lessen [Young Brothers'] impact on the environment. The power produced by Young Brothers' photovoltaic system would reduce carbon dioxide emissions by roughly 2,500 tons over 20 years. The proposed equipment lease also provides Young Brothers with greater stability and control over future electricity costs and is consistent with its parent company's (and its own) environmental policy. In addition, the photovoltaic system should help increase employee (and community) awareness of environmental issues and serve as an example of the feasibility of 'green' initiatives."¹¹

Based on Young Brothers' representations, the commission finds that, consistent with HRS § 271G-17.5, the photovoltaic system constitutes the construction, completion, extension, or improvement of or addition to the water carrier's facilities, and there is no evidence in the docket record that the installation of the photovoltaic equipment will adversely affect the water carrier's operations. The Consumer Advocate, moreover, supports the commission's expedited approval of Young Brothers' request. The commission, thus, approves Young Brothers' request for expedited approval to enter into the equipment lease. That said, the commission's decision may be revisited in the event that any interested person is allowed to intervene or participate in this proceeding.

apparent inconsistency is explained by Young Brothers in its documents filed under confidential seal.

¹¹Application, at 14.

C.

Other Matters

The commission questions the extent and scope of the information designated as confidential by Young Brothers in its Application. According to Young Brothers, "[t]he information comprises internal Young Brothers proprietary data, analysis, or computations."¹²

The commission takes particular issue with the confidential designation of certain information set forth in: (1) pages 12 and 13 of the Application, including footnote 4 and the initial paragraph on page 13; and (2) YB-Ex-1, including why the entire equipment lease and its supporting documents therein are designated as confidential.¹³ In the commission's view, Young Brothers' basis for designating this information as confidential is insufficient to support the withholding of this entire information from public review.¹⁴ Accordingly, Young Brothers shall file new pages to its Application, including YB-Ex-1, that disclose certain of the information it has previously designated as confidential.

¹²Application, at 6. Furthermore, as of the date of this Order, no protective order has been issued by the commission in this proceeding.

¹³See In re Young Bros., Ltd., Docket No. 2006-0396, Order No. 23222, filed on January 26, 2007, Section II, Information Designated as Confidential, at 36-39.

¹⁴For example, only from reviewing the Consumer Advocate's Statement of Position and this subsequent Decision and Order are members of the public aware that an option to purchase the photovoltaic system at the end of the ten-year term of the equipment lease exists for Young Brothers.

Finally, it appears that the photovoltaic system is designed to interconnect with HECO's electric system. Accordingly, Young Brothers shall inform the commission about any interconnection agreement or net energy metering agreement that will be executed with HECO as part of the photovoltaic system project, and whether such an agreement will modify the terms of the equipment lease that is finally executed between the contracting parties, or affect the projected cost savings in electricity as reflected in the Application.¹⁵

III.

Orders

THE COMMISSION ORDERS:

1. Young Brothers is not required to submit the information set forth in HAR §§ 6-61-101(b)(2)(3)(5)(6)(7)(8)(9) and 6-61-75(b)(1)(2).

2. Young Brothers' request for expedited approval to enter into a long-term lease for photovoltaic equipment to power its shore-side maintenance operations is approved. The commission's decision may be revisited in the event that any interested person is allowed to intervene or participate in this proceeding.

3. By October 10, 2008, Young Brothers shall file new pages to its Application, including YB-Ex-1, that disclose certain of the information it has previously designated as

¹⁵See HECO's Rule 14H, Interconnection of Distributed Generating Facilities Operating in Parallel with the Company's Electric System; and HECO's Rule 18, Net Energy Metering.

confidential, consistent with the terms of this Order. Copies shall be served upon the Consumer Advocate.

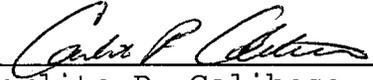
4. By October 10, 2008, Young Brothers shall file information about any interconnection agreement or net energy metering agreement that will be executed with HECO as part of the photovoltaic system project, and whether such an agreement will modify the terms of the equipment lease that is finally executed between the contracting parties, or affect the projected cost savings in electricity as reflected in the Application. Copies shall be served upon the Consumer Advocate.

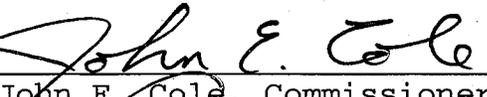
5. Within seven calendar days following the execution of the equipment lease between the contracting parties, Young Brothers shall file copies of the executed equipment lease with the commission, with copies served upon the Consumer Advocate.

6. Within 30 calendar days following the termination of the ten-year lease term, Young Brothers shall file with the commission, with copies served upon the Consumer Advocate, a notification filing that: (A) states whether Young Brothers intends to execute its option to purchase the equipment from Central Pacific Bank; (B) the purchase price with support for such price; and (C) an analysis that demonstrates the reasonableness of the water carrier's decision to make such a purchase.

DONE at Honolulu, Hawaii OCT - 3 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

2008-0253.cp

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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