

**WRITTEN PRESENTATION OF CARLITO P. CALIBOSO  
CHAIRMAN, PUBLIC UTILITIES COMMISSION  
DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
DECEMBER 2, 2010**

**INFORMATIONAL BRIEFING:** Docket No. 2009-0059, In re Application of Pasha Hawaii Transport Lines LLC for Issuance of a Certificate of Public Convenience and Necessity and Approval of its Local Tariff No. 1 for Service Between and Among the Ports of Honolulu, Kahului, Hilo and Nawiliwili.

Chair Baker and Members of the Committee:

Aloha, my name is Carlito Caliboso. I am the chairman of the Hawaii Public Utilities Commission ("Commission").

Preface:

This informational briefing is being held to discuss Pasha Hawaii Transport Lines LLC's ("Pasha") application for a Certificate of Public Convenience and Necessity, Docket No. 2009-0059.

The Commission issued its Interim Decision and Order on September 20, 2010. On October 4<sup>th</sup>, YB filed a motion to reconsider and stay the Commission's Interim Decision and Order. On December 1, 2010, the Commission denied YB's motion.

Since this is an open docket and a quasi-judicial proceeding before the Commission, I am not able to comment on any specific issue related to the docket. I can, however, provide a brief summary of Pasha's application and the Interim Decision and Order, and explain what will be the next procedural steps in this matter.

Summary of Pasha's Application for a CPCN

- On March 13, 2009, Pasha filed an application for the issuance of a Certificate of Public Convenience and Necessity ("CPCN") to operate as a water carrier of property between and among the islands of Oahu, Maui, Hawaii, and Kauai, and for approval of its proposed Local Tariff No. 1.
- According to the information presented in Pasha's application, Pasha is a California limited liability company, formed in December 1999. It is currently owned by The Pasha Group, a family-owned, privately held company, and Hawaii Ship Management, LLC (formerly Van Ommeren Shipping (USA) LLC).
- Since March of 2005, Pasha has operated a roll-on/roll off ("RO/RO") car and truck liner service between San Diego, California and the islands of O'ahu, Maui, Hawai'i, and Kaua'i.

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- Pasha operates the M/V Jean Anne on a fortnightly service schedule (i.e., every 14 days) with a standard vessel rotation of San Diego/Honolulu/Kahului/Hilo/San Diego. Vessel calls have also been made at Nawiliwili, Kaua'i, and Pearl Harbor and Barbers Point on O'ahu in response to a customer's request.
- Pasha is now seeking to expand its existing interstate operations to include intrastate water carrier service. As described in its Application, Pasha proposes to provide inter-island water transportation service for heavy commercial and military truck/trailer equipment, tracked vehicles, buses, automotive/recreational vehicles and other general cargoes, excluding passengers, livestock, and refrigerated cargoes.
- Pasha plans to provide regular fortnightly intrastate service to Honolulu, Hilo, and Kahului.
- Pasha is also proposing to make calls at Nawiliwili, Barbers Point, and Pearl Harbor upon customer request.
- Pasha does not intend to serve the islands of Moloka'i and Lana'i since the harbor dimensions cannot accommodate the size of the M/V Jean Anne.

Summary of Interim D&O:

- On September 20, 2010, the Commission issued an Interim Decision and Order, authorizing Pasha to operate as a water carrier of property between and among the ports of Honolulu, Kahului, and Hilo, and to Nawiliwili, Barbers Point, and Pearl Harbor upon customer request, on an interim basis through December 31, 2013.
- Pasha's CPCN is limited to the scope of service set forth in the Application -- the use of only one vessel, the M/V Jean Anne, to be operated on a fortnightly service schedule between and among the ports of Honolulu, Kahului, and Hilo.
- As part of its 14 day regular sailing schedule, the M/V Jean Anne will go from San Diego to Honolulu to Kahului to Hilo and then return to San Diego. Therefore, with respect to its intrastate service, Pasha will be stopping at each of three Hawaii ports once every fourteen days.
- Under the Interim Decision and Order, Pasha is also authorized to make calls to Nawiliwili, Barbers Point, and Pearl Harbor, but only upon customer request.
- As explained in the Interim Decision and Order, the Commission determined that Pasha's proposed intrastate operations would:
  - ❖ foster competition in the intrastate shipping industry;
  - ❖ provide consumers with a choice of intrastate water carriers; and

- ❖ minimize any potential harm or inconvenience to the public if existing services were disrupted
- Based on the evidence presented in the record, the Commission concluded that there appears to be a “public need” for a second carrier.
- The Commission also determined that there was no specific, verifiable evidence in the record that Pasha’s proposed service will detrimentally harm the public or other intrastate water carriers.
- The Commission recognizes the concern that certain customers and neighbor island communities could potentially be negatively affected by Pasha’s entry into the market.

Businesses, farmers, and consumers that rely solely on YB for their shipping needs have expressed serious concerns that YB’s services will be reduced or terminated, or that YB’s rates will be increased as a result of Pasha’s entry.

- The reality, however, is that YB may not unilaterally terminate service or increase its rates – it must first obtain Commission approval via an application for a rate increase or a modification of its tariff.
- Furthermore, certain lines of service offered by YB have long been subsidized by YB’s more profitable routes, which means that certain customers are paying less than what it actually costs YB to provide them service. In the last two rate cases filed by YB, Dockets No. 2006-0396 and 2008-0266, YB and the Consumer Advocate agreed that the rates for specific lines of service would be gradually adjusted over time to become more compensatory, i.e. closer to a cost-based level. Therefore, regardless of Pasha’s entry, YB’s rates for certain lines of service were always expected to become more compensatory.
- Although the Commission acknowledges the concerns expressed by some of YB’s existing customers, it is important to note that the Commission’s decision is merely an interim decision. It is not final.
- The Interim Decision and Order will allow all Parties (including YB) the opportunity to conduct further discovery and present additional evidence for the Commission’s consideration.
- During its interim period of operations, Pasha will also be subject to regular reporting requirements including:
  1. Monthly financial and statistical reports
  2. Annual financial and statistical reports
  3. Annual cost of service studies, as well as
  4. A summary of its first 2 years of operations (i.e. Second Year Reports, which is a summary of its actual revenues, expenses and cargo volume statistics from initial

date of intrastate operations through Dec. 31, 2012, along with an updated economic analysis of Hawaii market and forecast of demand for inter-island shipping through 2017)

- These reports will enable the Commission and the Consumer Advocate to obtain actual intrastate revenue, cargo volume and cost support data, and evaluate the impact of Pasha's service on the State's inter-island shipping industry and the public interest.
- The Interim Decision and Order allows the parties to submit supplemental comments, expert testimony, and other evidence to the commission for consideration. After parties submit additional briefings, the Commission will then carefully review all of the evidence in the record and make a final decision.
- Instead of basing its decision on theoretical projections and assumptions that may not be reasonable, the Commission believes that the better approach in this particular instance is to allow Pasha to operate on an interim basis and use the resulting information and data to make a more informed final decision.
- If there is any merit to YB's claims that its existing intrastate services would be unduly harmed, then the Commission will consider such evidence and determine whether or not such adverse impacts outweigh any benefits that Pasha's service may offer to the general public.
- The Interim Decision and Order also clearly specifies that if, at any time, the Commission determines that Pasha's intrastate service results in undue harm to YB's existing services or to the public interest, the Commission can step in and impose additional conditions on Pasha's CPCN, or revoke Pasha's interim authority to operate altogether.
- Thus, the Interim Decision and Order has built-in safeguards to ensure that the public will not be adversely harmed during Pasha's interim service.

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Docket Summary:

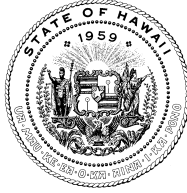
March 13, 2009	Pasha filed Application for a CPCN
April 7, 2009	Protective Order issued
April 27, 2009	YB files a motion to intervene
May 28, 2009	YB granted intervenor status
July 31, 2009	YB filed a Motion to Clarify or Modify the Stipulated for Protective Order filed on April 7, 2009 to Include YB as a "Qualified Person"
August 7, 2009	Pasha files its Opposition to YB's Motion to Clarify
September 15, 2009	Commission denies YB's Motion to Clarify
September 28, 2009	YB files a Motion to Reconsider or Clarify the Order Denying YB's Motion to Clarify
September 4 thru October 22, 2009	Discovery
October 9, 2009	Consumer Advocate and YB files their SOPs
November 10, 2009	Commission denies YB's Motion for Reconsideration
November 23, 2009	Pasha files its Reply SOP
December 4, 2009	YB files a Motion to Compel Pasha to provide responses to information requests
December 11, 2009	Pasha files its opposition to YB's Motion to Compel
December 15, 2009	Consumer Advocate files its Supplemental SOP
September 20, 2010	Commission issues its Interim Decision and Order and Order Denying YB's Motion to Compel
October 4, 2010	YB files its Motion for Reconsideration and Stay
December 1, 2010	Commission denies YB's Motion for Reconsideration and Stay

Proposed Procedural Steps:<sup>1</sup>

December 2010	Pasha's final tariff needs to be filed with the Commission before it can begin interim operations
Dec/Jan 2010 – Dec 2013	<p>Pasha is required to submit its regular reporting requirements during its period of interim operations (i.e., monthly and annual AFRs, annual cost of service studies)</p> <ul style="list-style-type: none"><li>• Monthly financial and statistical reports</li><li>• Annual financial and statistical reports (due March 31 for preceding calendar year)</li><li>• Annual cost of service studies (due January 31 for the preceding calendar year)</li></ul> <p>During this period of time, additional discovery regarding Pasha's monthly and annual financial and statistical reports and cost of service studies may be conducted.</p> <p>At any time, the Consumer Advocate may also submit comments in response to various reports submitted by Pasha. If, at any time, the Consumer Advocate determines that Pasha's intrastate service is causing undue harm on YB's existing services and/or the public interest, the Consumer Advocate may file a report summarizing its analysis and recommendations with the Commission.</p>
January 31, 2013	Pasha's Second Year Reports are due
January 31, 2013	YB's supplemental comments, expert testimony and other evidence regarding its claim of adverse impact are due
Feb – April, 2013	Additional discovery amongst the parties
March 1, 2013	Consumer Advocate's supplemental comments, expert testimony and other evidence to the Commission regarding Pasha's service and whether there are any adverse impacts to YB or the general public
May – June 2013	Supplemental briefing by the parties
Nov or Dec 2013	Final decision and order

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<sup>1</sup>See Young Brothers, Limited and the Consumer Advocate's Proposed Stipulated Amended Procedural Order, filed on October 4, 2010. See also Pasha's Proposed Amended Procedural Schedule, October 4, 2010. The commission is presently reviewing the proposed amended procedural schedule and will issue an amended procedural order shortly.



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GOVERNOR

JAMES R. AIONA, JR.  
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RONALD BOYER  
DIRECTOR

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SIXTH LEGISLATURE  
INTERIM OF 2010

THURSDAY, DECEMBER 2, 2010  
9:30 A.M.

PRESENTATION OF DEAN NISHINA, EXECUTIVE DIRECTOR, DIVISION OF  
CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER  
AFFAIRS, TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF  
THE COMMITTEE

**INFORMATIONAL BRIEFING - RELATING TO HAWAII PUBLIC UTILITIES  
COMMISSION INTERIM DECISION AND ORDER ON SEPTEMBER 20, 2010 IN  
DOCKET NO. 2009-0059**

**DESCRIPTION:**

The current status of the proceeding within which Pasha Hawaii Transport Lines LLC ("Pasha") is seeking Hawaii Public Utilities Commission ("Commission") approval of its Certificate of Public Convenience and Necessity ("CPCN") to operate as a water carrier of property between and among the ports of Honolulu, Kahului, Hilo, Nawiliwili, Barbers Point and Pearl Harbor is that the Commission has issued an Interim Decision and Order. In this Interim Decision and Order, the Commission has approved Pasha's ability to operate as an interisland water carrier, but with a provisional CPCN until 2013 to allow data to be collected to address certain issues that are still outstanding. There are, however, continuing questions being raised by the current certificated carrier, Young Brothers, Limited, ("YB") and some of YB's customers.

**COMMENTS:**

The Division of Consumer Advocacy ("Consumer Advocate") offers a brief summary of its actions in this proceeding.

By way of background, the Consumer Advocate is tasked with representing, protecting and advancing the interests of customers of utility and transportation services regulated by the Commission. It is often asserted that one of the purposes of regulation is supposed to simulate the presence of competitive forces, since in situations where there is a monopoly provider, competition is not possible.

Therefore, as part of its duties, the Consumer Advocate participated in the process of evaluating the application filed by Pasha and whether its request was reasonable. YB filed a motion to intervene, which was granted by the Commission, since YB was raising concerns about the impact of Pasha's entry into the interisland market. In this application, since there was an already existing provider of interisland water carrier services, the Consumer Advocate not only analyzed the normal issues of the applicant's fitness, willingness and ability, but also sought to analyze the issues of whether there was credible evidence to support YB's claims regarding significant adverse impacts that would not be offset by the benefits of allowing another carrier to enter the market. The Consumer Advocate filed a number of information requests and, although lacking the necessary Information Request ("IR") responses from both YB and Pasha, the Consumer Advocate filed its Statement of Position ("SOP") on October 9, 2009, in order to comply with the Commission's procedural schedule. In its SOP, the Consumer Advocate took the position that it did not object to Pasha's application, unless YB could provide a substantive, objective analysis that quantified and supported claims regarding adverse effects on the public interest since, in general, it has been the policy of the state to support actual competition, such as was allowed in the wireline and wireless telecommunications markets. The Consumer Advocate cautioned the Commission regarding a lack of evidence in the record from both the applicant and YB regarding the issues in this proceeding. With the limited information available at the time, it did not appear that Pasha would significantly affect YB's market share and the impact would be minimal.

Following the filing of the Consumer Advocate's SOP, the responses to information requests were filed by YB and Pasha. In those responses, YB provided its quantification of the potential losses it might experience should Pasha be granted the CPCN. While not supported by substantive analysis and evidence, the Consumer Advocate considered YB's assertions regarding the potential impact and, on November 17, 2009, made a request to the Commission to file a Supplemental SOP in order to incorporate the information provided in the responses filed by Pasha and YB. The Commission granted this request

Thus, on December 15, 2009, the Consumer Advocate filed its Supplemental SOP with the Commission, recommending that Pasha's application be denied. To summarize the 24-page supplemental SOP, the Consumer Advocate's position is that there is a continued lack of substantive evidence presented by both YB and Pasha. Generally, in most CPCN applications where there is no existing provider, the lack of evidence is anticipated since there is no operating history on the part of the applicant. In this instance, there is a higher expectation because of the existing provider and the



fact that the applicant has been providing interstate services for some time. The lack of evidence did not allow the Consumer Advocate to conduct meaningful analysis of whether the benefits of allowing Pasha to operate in the interisland shipping market would outweigh the possible impact on YB. Thus, there was uncertainty surrounding the impact to consumers, including subsidized customers on Molokai and Lanai, agricultural shippers, and users of less than container load ("LCL") service. As articulated in its Supplemental SOP, the Consumer Advocate's view is that YB's assumptions and estimates are overstated and we continue to await in-depth analysis and support to see how they determined their projected losses. On the other hand, Pasha has not offered much to help determine how much their proposed service will impact the market as well as whether their proposed rates are cost based. Even if YB's estimates are overstated, it is necessary to still consider the possible impact to consumers, and that uncertainty, among other things, questions whether Pasha's proposed service is in the public interest.

The Commission ultimately approved the application in the interim decision and order. Given YB's claims regarding the potential impact, the record in this proceeding should have evidence supporting it. The allowance of Pasha into the market on an interim basis does provide an opportunity for both Pasha and YB to collect actual data on how the two carriers will co-exist. The Commission has reserved the right to terminate Pasha's interisland service if it results in significant adverse effects on existing services or the public interest, which should mitigate possible negative effects from the decision.

Pursuant to the governing statutory language and Commission's rules, a carrier will not be able to change rates, such as increasing rates to agricultural shippers, nor change its sailing schedules and routes, including terminating services to any customer class or island, without Commission approval. This applies to both Pasha and YB. Thus, YB would not be able to unilaterally determine that it wishes to change its rates and collect more from a particular customer class nor change its sailing schedules. Thus, customers' interests are not left unprotected. Assuming that Pasha is allowed to provide intrastate services under the conditional interim authority granted, the Consumer Advocate will be waiting to see what data is collected by both Pasha and YB to support the analysis of the impact of Pasha's entry, as compared to, say, the impact of the current economic conditions on YB's operations.

Thank you for this opportunity to provide this presentation.

The Twenty-Sixth Legislature  
INTERIM 2010  
SENATE COMMITTEE ON CONSUMER PROTECTION  
Testimony by Bruce Nakamura, Counsel for Pasha Hawaii Transport Lines LLC  
**Informational Briefing on PUC Docket No. 2009-0059**  
**Conference Room 229**  
December 2, 2010  
9:30 am

Chairman Baker and Members of the Committee:

My name is Bruce Nakamura and I am one of the attorneys representing Pasha Hawaii Transport Lines LLC in this matter.

As this Committee is aware, in March 2009, Pasha Hawaii Transport Lines LLC filed an application in the Public Utilities Commission for the State of Hawaii for a Certificate of Public Convenience and Necessity to perform intrastate water carrier services in the State of Hawaii. Pasha Hawaii's proposed service would be limited to certain types of roll on roll off cargo, and would run once every two weeks in a single direction originating from Oahu.

As this Committee may be aware, in September of 2010 the PUC issued its Interim Decision and Order which granted Pasha Hawaii an interim license through December 31, 2010 to carry intrastate cargo. Intervenor Young Brothers, Limited filed a Motion for Reconsideration of that Interim Decision and Order and a Motion for Stay of Enforcement of the Interim Decision and Order. The PUC denied YB's Motion yesterday. Pasha Hawaii is waiting for the PUC's authorization to commence its intrastate water carrier service, as directed by the PUC in its Interim Order and Decision, and therefore this matter still remains pending before the PUC.

As such, for purposes of this legislative briefing, I am able to address the history of the proceedings in Pasha Hawaii's license application. I believe that the history of those proceedings is relevant to this briefing. However, because the PUC has jurisdiction over Pasha Hawaii's license application that is still pending before the PUC, Pasha Hawaii respectfully submits that it cannot address the merits of its license application in this forum.

Pasha Hawaii assures this Committee that these PUC proceedings have been lengthy and thorough, and the evidentiary record is voluminous. Pasha Hawaii filed its application with the PUC in March of 2009 and over 19 months later, the matter still remains pending. Pasha Hawaii, the State Consumer Advocate and YB were permitted to ask each other informational requests in writing. Pasha Hawaii responded to 75 informational requests from YB (many with multiple subparts) and 25 informational requests (many of which also contained multiple subparts) from the Consumer Advocate. The informational requests asked for detailed and specific information about Pasha Hawaii's proposed intrastate water carrier service. Pasha Hawaii filed a copy of all the responses that it gave to those 100 information requests with the PUC. Pasha Hawaii's point is that the PUC received an enormous quantity of detailed information about Pasha Hawaii's proposed service.

Each party filed a brief supporting its position. Each brief in turn was supported by expert witness reports, written statements of witness testimony and input from multiple individuals, businesses, and organizations, including submissions made from the neighbor islands. For example, YB's briefing included written submissions from businesses on the island of Maui, Kauai and the Big Island. In addition to testimonies

received from Oahu and businesses and organizations operating statewide, nearly 30 testimonial submissions have been made in this case from individuals, businesses, and organizations from the neighbor islands including Lanai and Molokai.

The evidentiary record that has been submitted to the PUC in this case has been supplemented 10 times. It can fairly be said that the evidence gathered and developed in the PUC proceeding has been extensive and detailed. Following the submission of the final briefing in connection with Pasha Hawaii's application in February of 2010, the PUC took seven months to consider the evidence before it.

Pasha Hawaii notes that the PUC's Interim Decision is well-reasoned and thorough. The Consumer Advocate's briefs filed with the PUC expressed the Consumer Advocate's concern that there was not sufficient information about the potential effect of Pasha Hawaii's entry into the intrastate water carrier market. The PUC's Interim Order and Decision is a solution which squarely addresses the Consumer Advocate's concern, as described by the PUC on pages 5 and 6 of its Order Denying YB's Motion for Reconsideration and Motion to Stay:

The Interim Decision and Order . . . will enable the Commission and the Consumer Advocate to obtain actual intrastate revenue, cargo volume and cost support data, and evaluate the impact of Pasha's service on the State's inter-island shipping industry and the public interest before making a final decision.

As set forth above, Pasha Hawaii, as an applicant for an intrastate water carrier license from the PUC, recognizes that it is subject to the jurisdiction of the PUC and respects the authority of that regulatory body. Moreover, as matter remains pending before the PUC, Pasha Hawaii will not be able to address the merits of its application in

this forum. Thank you for this opportunity to testify on behalf of Pasha Hawaii Transport Lines LLC.

Testimony of  
Roy Catalani,  
Vice President, Young Brothers, Limited

Before:  
Senate Committee on Commerce and Consumer Protection  
The Honorable Rosalyn H. Baker, Chair  
The Honorable Brian T. Taniguchi, Vice Chair

December 2, 2010  
9:30 am  
State Capital, Conference Room 229

**Informational Briefing regarding update on and information about the recent Interim Decision and Order issued on September 20, 2010, by the Public Utilities Commission in Docket No. 2009-0059, In re Application of Pasha Hawaii Transport Lines LLC for Issuance of a Certificate of Public Convenience and Necessity and Approval of its Local Tariff No. 1 for Service Between and Among the Ports of Honolulu, Kahului, Hilo and Nawiliwili.**

Chair Baker, Vice Chair Taniguchi and Members of the Committee:

We are pleased to accept your invitation to this informational briefing to discuss where the Pasha decision takes us and to provide input as to whether legislative action is necessary and appropriate to ensure the continuation of intrastate water carrier services in the public interest. We believe that whatever happens on these issues in the coming year will, for better or worse, determine the service that your constituents and, in particularly, our neighbor island residents, will receive in the future.

There is one issue for which we would like to be clear from the very beginning: We support fair competition. We stand ready to compete with any carrier under one set of rules.

However, in our opinion, that is not truly the question. The question is: What system best serves those who depend upon it? A regulatory system? A competitive system? Something in between? Relatedly, what are the consequences of this choice?

To address these questions, we respectfully submit that we have to first address the question of why the Legislature, as the State's policymaking body, chose the regulatory system. We believe that State policymakers create regulated markets for public utilities where there is a relatively **small market** that requires **high capital investment**. We also believe that policymakers do so to avoid "splitting" a small market between two or more competitors. To do so would result in higher prices and possibly lesser or no service for certain communities, because multiple carriers cannot achieve the "efficiencies of scale" and "scope" that a single carrier can achieve.

Creating and maintaining these efficiencies allow for benefits such as:

- Lower average costs across the board to all users;
- Multiple weekly sailings to large islands where not all barge loads are profitable;
- The opportunity to cross-subsidize certain routes and services, including subsidies to
  - Small ports: making service possible
  - LCL: To lower small cargo rates
  - Agricultural products: making 30-35 percent discount possible

In this context, it is regulation by the PUC, rather than competition, that provides a check and, if necessary, a control upon prices and service levels.

Should your committee desire, we would very pleased to take each of you on a tour of the Young Brothers facility to demonstrate, first-hand, the efficiencies Young Brothers has achieved and how we have achieved them as well as to share the data behind these efficiencies.

We are often asked, does this regulatory structure mean that an existing carrier is “entitled” to a regulated “monopoly” for all intents and purposes? The short answer is “no.” We do believe, however, that it means that a regulated carrier is entitled to assurance that the market will not be split if the carrier makes the required investment and provides the required service. In fact, the Legislature saw to this by requiring, under HRS Chapter 271-G, that a new carrier may enter a regulated market only if it can show that its service is a public “necessity.” For example, the new carrier must prove that certain markets or types of customers are left unserved by the existing carrier. We do not believe that Pasha met its burden of proof on this issue.

Putting aside, for the moment, the issue of unfairness to YB, one might ask whether a transition to a competitive system would better serve our communities. That is or should be up to the Legislature, as the State’s policymaking body, although we strongly recommend that each affected community participate and be given an appropriate means to join in this discussion and decision.

We believe that one part of this discussion must be a comparison of the regulatory and competitive models for water carriers, which may be summarized as follows:

	<b>Regulatory Model</b>	<b>Competitive Model</b>
<b>Rates</b>	Determined by PUC	Determined by market
<b>NI Ports Served</b>	Universal service	Determined by carrier's ability to generate return
<b>Frequency of Service</b>	Determined by needs of State's communities	Determined by carrier's ability to generate return ("on inducement")
<b>Cargo Types</b>	All Cargo Types, including refrigerated cargo, livestock & LCL	Determined by carrier's ability to generate return
<b>Equipment Available</b>	As necessary to support univ. service	As necessary to support carrier's needs

The contrast in the two models was summarized by Pasha's economist as follows:

"The optimal solution is to regulate neither player, or at least subject them to no greater rules than exist in the oligopolistic or duopoly markets that Hawaii now has - interstate ocean surface cargo transportation, intra-island airline routes, and several others. In that situation, both players can serve the markets they wish, at the prices the market will bear, with the types of vessels they wish, with as many or few of them as they deem profitable, and so forth."

This comparison of models plays out in the differences in services offered by Young Brothers and Pasha. As one may see by the following table, in the present post-Pasha hybrid model, YB continues to perform as a carrier in a regulated system providing universal service with frequency of sailings based on community or public convenience and necessity. Pasha has been authorized to act as a carrier in a competitive model in that it has been allowed to choose which routes it desires to serve and which services it desires to provide:

	<b>Young Brothers (Still in Regulatory Model)</b>	<b>Pasha (Allowed to operate as if in Competitive Model)</b>
<b>Rates</b>	Determined by PUC	Based on YB rates
<b>NI Ports Served</b>	All 6 N.I. ports, developed over 50 years of regulation	Kahului, Hilo, &, if <i>induced</i> , Nawiliwili. NOT Kaw, K'Kai, K'Pau
<b>Frequency of Service</b>	12 weekly sailings (roundtrip) (JIT system developed under regulation)	Once every two weeks (one way only)
<b>Cargo Types</b>	All Cargo Types, including reefer cargo & livestock	Primarily Auto/RORO. No reefer cargo or livestock
<b>Equipment Available</b>	7 barges, tugs, containers, chassis, heavy lift service	Auto/RORO vessel plus ????



With respect to the ultimate consequences, and risks, of the choice between a regulatory model, a competitive model or the post-Pasha hybrid model, these may be summarized as follows:

	<b>Restore Regulatory Model</b>	<b>Keep Current Hybrid Model</b>	<b>Complete move to Competitive Model</b>
<b>Rates</b>	Increase in 2011	Increase more in 2011	Some winners, more losers
<b>NI Ports Served</b>	Same: all 6 N.I. served	Small ports: no service	Likely larger ports
<b>Frequency of Service</b>	Same: 12 weekly sailings (Maui?)	Big ports: less sailings	Driven by carrier return
<b>Cargo Types</b>	Same: All Cargo Types	LCL at risk	Driven by carrier return
<b>Equipment Available - CAPITAL</b>	YB: Same plus future investment	YB: Capital at higher cost or not able to attract	As needed and driven by above

We do not believe these risks, as highlighted above, have been addressed. The Division of Consumer Advocacy agreed, as it concluded that “given the potential negative consequences of the applicant’s [Pasha’s] entry into the Hawaii market, the consumer advocate believes that Pasha Hawaii has failed to provide sufficient information to meet the burden of proof that its proposed service is in the public interest...”

As demonstrated, the Pasha case, and its consequences and risks, are about a lot more than YB. If the Legislature, and our communities, believe that these consequences and risks have not been adequately addressed – through public hearings, consideration of testimony of the appropriate parties, evidentiary hearings and questions by Commissioners as well as by and between the parties – then we believe we must find an avenue in which to address them.

If the Legislature and our communities have spoken and are unwilling to undertake these risks of this experiment, we believe we must clarify for all to understand the policy of this State with respect to intrastate water carriers and protect our communities from these risks.

Thank you for this opportunity to testify.



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December 1, 2010

## TESTIMONY

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

**Re: Interim Decision and Order Granting Pasha Hawaii Transport Lines LLC a Certificate of Public Convenience and Necessity – Docket No. 2009-0059**

Chair Baker and Members of the Committee:

My name is Warren Watanabe, Maui Field Staff for Hawaii Farm Bureau specializing in transportation and water issues for the organization. Hawaii Farm Bureau Federation on behalf of commercial agricultural operations throughout the State appreciates this opportunity to **express our opposition to** the interim decision order granting Pasha Hawaii the right to provide **selected interisland transportation services**. We believe the entry of Pasha will have a serious negative impact on the movement of agricultural goods between islands. HFBF submitted such comments on April 28, 2009 prior to the DO and have since submitted our comments to the PUC and Consumer Advocate since the issuance of the interim order.

Yesterday afternoon, we were shocked that PUC has already denied this motion for reconsideration in light of this scheduled hearing. We maintain our position that the DO was issued without full recognition of the affected parties. Unlike the early 2000s, even with some improvement, the economy is still far from the prosperity of yesteryear and we see the decline of activity at the harbors. The entry of Pasha Hawaii under these circumstances is especially troubling.

HFBF's policy on transportation seeks to work with entities to enhance transportation for commercial agriculture while containing associated costs. We recognize that changes cannot be done unilaterally by YB. However, PUC hearings take time. Farmers and ranchers operating on narrow profit margins must take time away to attend these hearings ...if it can be avoided, it should be ..that is HFBF's

goal. **Loss of farmers and ranchers due to increased transportation costs is not a fear of the unknown ...past experience assures us it will happen.**

Even as the Consumer Advocate agreed that the rates for specific lines of service would be gradually adjusted over time to become more compensatory, the Island Product Discount was increased to 35% on July 28, 2009. HFBF believes that the CA and PUC understood YB's efforts to support the State Constitution of supporting Hawaii's agriculture to promote increased self sufficiency and sustainability. There was no doubt that other lines of service subsidized this discount. **The current action will take these more lucrative lines of service away from YB, threatening the very discount supported by PUC and the CA.**

Tuesday morning, the Food Safety Modernization Act was passed in the US Senate. While it still awaits final passage to law, **providing safe food to the consumer is a priority for all of us. Handling of food during transportation is critical and has impact on farmers and ranchers as many of our deliveries are FOB the customer, not the farm.** That means we are still responsible for the product even as it leaves the farm. Our work with YB has focused on this area to ensure the integrity of our products during transit. Young Bros. may be required to invest further beyond their current CIP projects. As businesses we are fully aware that the ability to invest is totally dependent upon the profitability of the organization. It is reasonable that the shareholders of YB will question further capital expenditures as their profitability is placed in question.

PUC stated "Given the critical importance of the inter-island shipping industry in the movement of produce, livestock, and consumer goods within the State, the commission believes that the continued reliance on only one intrastate water carrier of property places the State in an untenable position."

This does not make sense. **Pasha is NOT going to carry produce, livestock and refrigerated consumer goods** ...so what advantage will there be? If anything, we are putting the transport of these goods at risk. We urge PUC to reconsider the risks associated with this class of goods.

The Consumer Advocate has stated that the impacts of the proposed service cannot be projected as it is limited in scope and more expensive than the rates charged by YB. The CA states that there probably would be only a limited amount of customers that would use the service. If this were true, why is Pasha undergoing this effort? Their business plan must project they will get the customers and make money. It is illogical that they would undergo this entire process without some confidence that they will be able to secure businesses associated with their proposed lines of service.

PUC has reserved the right to revoke the interim authority if it sees significant adverse effect on YB. **What is “adverse effect”?** The authority was granted because PUC felt that the projections provided by YB were speculative at best and the interim period would provide data to determine whether there is an adverse affect on YB but no mention of impacts to users of the service – farmers, ranchers, and the consumer. **Allowing for revoking of the Interim DO without defining the triggers will surely result in unintended consequences as parties dispute levels of detriment.**

We appreciate the opportunity provided by this hearing to better understand the potential impacts of this decision. We find it unfortunate that PUC chose to release its’ final decision before the discussion today. We hope there can be an **amicable decision before our farmers and ranchers along with the community become victims of the unintended consequences of this decision.**

Thank you.



# Hawaii Cattlemen's Council, Inc.

P O Box 437199 Kamuela HI 96743  
Phone (808) 885-5599 • Fax (808) 887-1607  
e-mail: [HCattlemens@hawaii.rr.com](mailto:HCattlemens@hawaii.rr.com)

## SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Thursday December 2, 2010 9:30 am Room 229

### **Informational briefing on PASHA interim decision**

Chair Rosalyn H. Baker and Members of the Committee:

My name is Alan Gottlieb, and I am the Legislative Committee Chairman for the Hawaii Cattlemen's Council. The Hawaii Cattlemen's Council, Inc. (HCC) is the Statewide umbrella organization comprised of the five county level Cattlemen's Associations. Our 130+ member ranchers represent over 60,000 head of beef cows; more than 75% of all the beef cows in the State. Ranchers are the stewards of approximately 25% of the State's total land mass.

The Hawaii Cattlemen's Council has voiced strong concerns about the PUC's interim decision and order to allow Pasha into the Interisland shipping market, and we are very disappointed in the State Consumer Advocate for their lack of support of neighbor island consumers who will lose service and will see rate hikes due to this decision.

We previously provided an affidavit to the PUC for docket 2009-0059. Our affidavit had the following summary:

*Pasha's proposed service can neither replace and, in fact, with respect to rancher's transportation needs, does not even propose to supplement YB's service. Pasha's proposed service, if authorized by the Commission, will hurt the ranching and livestock industry because (a) Pasha will not provide a transportation alternative while (b) harming YB's ability to continue offering (i) agricultural discounts and (ii) the frequency of service as well as service to all islands which YB customers and our industry presently have and rely on.*

In October 2010, we wrote to the State Consumer Advocate, which in part stated:

*... we would like to reiterate to you, the office who is supposed to represent and protect the interests of consumers in Hawaii, the severe harm that the PUC's decision in allowing Pasha to operate in Hawaii will have on the Hawaii Cattle Industry and to Hawaii farming in general. Of course, if the Hawaii agricultural industry suffers from this decision, every consumer in Hawaii will suffer when purchasing fresh local products. After all, doesn't the State have mandates for Food Security and Sustainability?*

*We cannot understand how the PUC can allow Pasha to cherry pick routes, schedules and cargo in Hawaii, when Young Brothers is required to service all ports and all types of cargo. For many years Young Brothers has supported the ranch and farming industries by offering us discounts for our Hawaii agricultural goods. If Young Brothers is put in a position where they lose their best business to a cherry picker, we doubt they will be able to continue to offer these types of discounts. If they cannot offer these discounts, then the price of Hawaii fresh foods will go up in supermarkets across the State, and the consumers will suffer. Furthermore, without these discounts, if Hawaii agricultural cannot compete with imported agricultural products, often dumped in Hawaii at cheap prices, our entire local agricultural business is at risk of disappearing. Isn't this the type of interests the Consumer Advocate should be looking out for?*

Hawaii Cattlemen's Council Testimony

Page 2

December 2, 2010

*We sincerely hope you will let the PUC know that allowing Pasha to cherry pick is bad for Hawaii consumer. On the other hand, if Pasha is willing to support all the routes, schedules and types of Cargo as Young Brothers does, then we would whole heartedly welcome them into the marketplace.*

Nevertheless, the PUC issued their interim decision allowing Pasha to cherry pick the Hawaii shipping business. We believe the PUC didn't even hold community meetings in the neighbor island communities this would most affect. In the words of the late, great, J. Akuhead Pupule "How you figgah?"

Thank you for giving us the opportunity to testify on this very important issue.



December 1, 2010

## TESTIMONY

### SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

#### **Re: Interim Decision and Order Granting Pasha Hawaii Transport Lines LLC a Certificate of Public Convenience and Necessity – Docket No. 2009-0059**

Maui County Farm Bureau on behalf of our commercial member farm and ranch families and organizations is in opposition of the Interim Decision Order granting Pasha Hawaii a Certificate of Public Convenience and Necessity.

MCFB has worked for many years with Young Bros. and DOT Harbors to improve Kahului Harbor, reduce transportation costs and improve harbor and transit conditions for our agricultural products. Most recently YB has worked with us to upgrade our Island Fresh Discount to meet the current and future needs of our ag producers.

All of this takes money. We appreciate the PUC's approval of the Island Fresh discounts that are possible due to subsidization by other more profitable lines of service. The PUC agreed with Young Bros. that this preferential treatment was allowed since the importance of agriculture is highlighted in the State Constitution as being a desirable activity for the long term sustainability and increased self sufficiency for Hawaii.

This Interim DO provides a similar preferential treatment by allowing Pasha to provide only the more lucrative lines of service ...the same ones that subsidize our agricultural discounts. Yet, unlike agriculture, PASHA's services are not recognized in the State Constitution. We therefore question why this is allowed by the PUC which otherwise requires that lines of service be compensatory in nature and not allow undue preference or advantage.

Agriculture is not a high margin business. Those on the neighbor island must depend on interisland transport to get our products to the population center on Oahu. We also depend on YB to get many of our agricultural inputs to us. Records show that YB has not made exorbitant profits and we fear that this change may cause losses that may be unacceptable to YB's shareholders.

The State Policy to support agriculture for increased self sufficiency and sustainability should be taken into account in this process. Without affordable and reliable transportation we cannot have viable agriculture.

We respectfully request your support in urging the PUC to approve YB's request to reconsider. Thank you for this opportunity to voice our opinion. If there are questions, please contact our Executive Director, Warren Watanabe at 2819718.

December 1, 2010

Senator Rosalyn H. Baker  
Chair, Senate Committee on Commerce and Consumer Protection

**Re: Interim Decision and Order Granting Pasha Hawaii Transport Lines LLC  
a Certificate of Public Convenience and Necessity – Docket No. 2009-0059**

Senator and Committee Members:

As you know Maui Pineapple Company closed operations at the end of 2009. One of the main reasons contributing their losses was the combination of steep shipping costs and the competition from international pineapple producers in the west coast market. Our team at Haliimaile Pineapple Company set in place a strategy to focus sales primarily in the state of Hawaii where the prices and volumes are relatively constant. Year to date, we have sold over 70% of our volume in state with the remainder shipping to the west coast or flying to premium markets that can bear the high costs. The table below shows the relationship of HPC's per case shipping cost by market location and the percentage of our year to date sales from that market.

Market	Shipping Cost as % of Fruit	
	Cost	% of Sales
Mainland	24%	30%
Oahu	21%	21%
Maui	N/A	33%
Big Island	26%	8%
Kauai	25%	8%

As you can see, it actually costs us less to ship pineapple to the mainland than it does to the Big Island and Kauai. It is important for our projections to keep the interisland shipping rate not just competitive but also stable. Even a slight increase in these interisland shipping costs will force us to re-evaluate our sales strategy and possible force us to stop selling fruit to unprofitable markets.

Young Brothers management has been extremely cooperative with outer island farmers and ranchers. They have maintained quality service, modified schedules to accommodate agricultural operations and most significantly they offer agriculture a discounted rate that has saved our company nearly \$100,000 this year alone.

It is my understanding that Pasha entry into this arena will offer us zero opportunity to ship pineapple interisland. The PUC is quoted as saying, "Given the critical importance of the inter-island shipping industry in the movement of produce, livestock and consumer goods within the State, the commission believes that the continued reliance on only one intrastate water carrier of property places the State in an untenable position." On behalf of Haliimaile Pineapple Company I strongly disagree with this statement. My fear is that the uneven playing field that has been created will allow Pasha to cherry pick higher margin goods and ports leaving YB in a position



to question both rates and service schedules which could lead to an escalation of our shipping costs.

Thank you for this opportunity to participate.

Darren Strand  
President, Haliimaile Pineapple Company

**From:** Chad Buck  
**Sent:** Wednesday, October 13, 2010 10:42 AM  
**To:** 'consumeradvocate@dcca.hawaii.gov'  
**Subject:** Pasha will hurt not help the neighbor island food supply

Aloha,

It is my understanding that the Young Brother's is appealing the PUC's ruling on allowing Pasha to compete in the marketplace by a different set of rules.

The reason that I am writing is to express my continued concerns that allowing Pasha to compete in Hawaii while playing by a separate set of rules is not only patently unfair, it will very likely disrupt the flow of food products and service to the neighbor islands, especially the islands of Lanai and Molokai.

The consistency, reliability and low cost structure that Young Brothers provides allows us to provide the best pricing to our neighbor island customers and allows us to service these customers with a reliable just in time delivery of the freshest products through the multiple sailings that YB operates every week.

The current sailing schedule that YB provides allows all neighbor islands to enjoy a similar service level. While I am sure that the smaller islands of Lanai and Molokai are less profitable (if profitable at all) than the other more populated islands, the schedule ensures that all Hawaii residents have a partner in keeping essential items available and inter-island shipping costs fair.

Pasha will not be operating refrigerated containers. Without refrigerated cargo, food distributors to the neighbor islands and consumers of food, will not benefit from Pasha's entry in to the market place. If the PUC allows Pasha to cherry pick the best islands without the burden of servicing the slower islands (like the PUC requires of Young Brothers), it stands to reason that YB will have to decrease the level or frequency of service and or increase the cost to the shippers/consumers for food items just to stay in business.

I strongly believe that the PUC should require Pasha to operate under the same rules or not allow them to enter the market, at all. Allowing unfair competition for a three year period like the PUC proposed will hurt, not help the Hawaii consumer and could cause irreparable harm to Young Brothers as they are forced to compete on an uneven playing field.

Please consider this opinion in your discussions with the PUC on this matter.

Thank you.

Chad Buck  
Owner  
Hawaii Foodservice Alliance LLC  
Oahu, Kona, Hilo, Maui, Kauai

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# Maui Hotel & Lodging

ASSOCIATION

Testimony of

**Carol Reimann**

Executive Director

Maui Hotel & Lodging Association

on

## **Interim Decision and Order Granting Pasha Hawaii Transport Lines LLC a Certificate of Public Convenience and Necessity – Docket No. 2009-0059**

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

**Thursday, December 2, 2010, 9:30am**

**Room 229**

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes approximately 120 property and allied business members – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 10,000 Maui County residents.

MHLA has serious concerns regarding the PUC's interim decision granting Pasha Hawaii permission to provide selected interisland surface carrier service. Competition is typically a good thing. However in this instance, we are concerned that this ruling will have far-reaching unintended consequences that will negatively affect the cost and frequency of shipping to Maui County.

We do not support any action that legislatively endorses an "uneven playing field." Because Pasha Hawaii lacks refrigerated containers and do not have small vessels to service smaller ports (i.e. Lanai, Molokai and Hana), they are able to compete against Young Brothers for only the highly profitable routes. Where Pasha is being allowed to provide limited service, Young Brothers is mandated to provide comprehensive service (perishables and non-perishables) to all communities; and have structured their rates accordingly where low profit areas are balanced with other profitable businesses. Pasha is not being regulated in the same way as Young Brothers. Ultimately, this will force Young Brothers to take a hard look at their rates and the frequency of service to various ports.

The visitor industry is the economic engine for Maui County – the majority of our businesses and residents rely on a healthy industry in order to survive. The visitor industry is just beginning to see signs of a steady recovery. Any increase to the cost of doing business could jeopardize our ability to provide first class goods & services, increase the cost of travel to our visitors, and ultimately put our viability at risk.

MHLA recognizes that the decision is within the PUC's authority and would like to urge the PUC to obtain input from all island communities who would be affected by this ruling and to engage Young Brothers as the State's primary inter-island/intra-State cargo shipper as a party to the proceedings. We support Young Brothers request for reconsideration and denial of the application until the matter has been fully reviewed.

Thank you for the opportunity to testify.

cc: Carlito Calibuso, Chair Hawaii State Public Utilities Commission, via email: [hawaii.puc@hawaii.gov](mailto:hawaii.puc@hawaii.gov)  
Dean Nishina, Consumer Advocate DCCA, via email: [dca@dcca.hawaii.gov](mailto:dca@dcca.hawaii.gov)

**From:** Richard Ha [<mailto:richard@hamakuasprings.com>]

**Sent:** Thursday, October 14, 2010 1:01 PM

**To:** 'consumeradvocate@dcca.hawaii.gov'

**Cc:** ''

**Subject:** FW: Re: Application of Pasha Hawaii Transport Lines LLC Docket No. 2009-0059

Consumer Advocate

Attn: Dean Nishina

Re: Application of Pasha Hawaii Transport Lines LLC Docket No. 2009-0059

Authorizing Pasha to compete against Young Brothers unfairly in a world of rising oil prices and business contraction, will hurt Hawaii's ability to achieve food security. I am vehemently against doing this.

I am the owner and President of Mauna Kea Banana Company, Inc., a Hawaii corporation, doing business as Hamakua Springs Country Farms (Hamakua Springs) at Pepeekeo on the Big Island. I have a degree in accounting from UH Manoa and I am a member of the Hawaii Clean Energy Initiative -Steering Committee; Co chair of the Geothermal working group- authorized by Senate Concurrent Resolution 99; Member of the Hawaii Island Economic Development Board and a board member of the Kohala Center.

Hamakua Springs is a family business that we started 30 years ago with 2 acres--by trading chicken manure for banana keiki. We now have more than 60 employees and own 600 fee simple acres. Farming is a very tough business. The average age of a farmer in Hawaii is 60. We are survivors and the most important trait that helped us to survive all these years was the ability to foresee and adapt to change. We routinely plan for the reality that will exist —five, ten years in the future; then we force the change necessary to get us there.

From our farm point of view, we will adapt to whatever decision is made. Our decision to expand and to supply produce statewide had lots to do with Young Brothers discounted agricultural rates that was instituted many years ago. If the discount rates go away, we will make the financial decisions necessary to adapt, very quickly. We are discussing that eventuality right now. We will not wait and let our cash position deteriorate to the point it jeopardizes our future.

But, from a larger community point of view, I think that Pashas entry into the Hawaii market now, comes at an inopportune time. I attended the Peak Oil conference in Wash. DC. last week. The consensus among numerous credible sources from our own Dept of Defense, the German military, petroleum industry leaders, etc., is that world oil supply will start to decline steadily 2 to 5 years from now. Energy is what drives economies and when energy declines, economic activity declines. Introducing more capacity into our interisland trade at a time when economic activity is declining is foolish. Allowing this to happen in the form of "cherry-picking" is even more inexplicable, particularly when it threatens (and the new market entrant does not offer) the things upon which farmers rely such as Young Brothers' frequency of service, refrigerated service, service directly to Honolulu Harbor and the Oahu markets and island agricultural product discount.

Lloyd's of London issued a white paper for its business clients, it warned them to be prepared for \$200 per barrel oil by 2013. [http://www.chathamhouse.org.uk/files/16720\\_0610\\_froggatt\\_lahn.pdf](http://www.chathamhouse.org.uk/files/16720_0610_froggatt_lahn.pdf). I asked Carl Bonham and Denise Konan of UHERO if they would do an analysis of \$200 per barrel oil. They agreed but made clear that they are not in the business of predicting; but they could evaluate the effects should it happen. In the discussion, it was acknowledged that \$200 per barrel oil would be devastating to our tourism industry.

To reiterate, allowing Pasha into the interisland trade could force Young Brothers to repeal or change the very things upon which farmers rely to stay in business, including the frequency and nature of the services Young Brothers offers and its agricultural subsidies as described above. Food security has to do with farmers farming and if the farmers make money, the farmers will farm. Allowing Pasha to compete with Young Brothers unfairly and at a time of economic downturn will hurt Hawaii's effort to become food secure.

You need to word your denial of Pasha's entry into the interisland cargo trade in a strong unequivocal way. The stakes are very high.

Aloha

Richard Ha  
President  
Mauna Kea Banana Company  
Dbm Hamakua Springs

Senate Committee on Commerce and Consumer Protection  
The Honorable Rosalyn H. Baker, Chair  
The Honorable Brian T. Taniguchi, Vice-Chair

December 2, 2010  
9:30 AM  
Senate Room 229

Chair Baker, Vice Chair Taniguchi, and committee members,

Thank you for this opportunity to discuss and address your committee, on the interim decision and order issued by the PUC on granting PASHA to service the interisland ports for cargo service.

I come before you today as President of Nalo Farms, Inc., and a farmer that does business with over 100 restaurants and markets in Honolulu and Maui. We also sell other farmers products to many of these establishments, some products of which are brought into Honolulu on Young Brothers. I have always appreciated Young Brothers concern for helping agriculture, as we would not be able to buy and distribute some of the Neighbor Island products without YB's help in shipping discounts for agricultural products.

We hear growing talks about sustainability and food security and increasing our local agricultural products for the people of Hawaii, and yet we are now looking at a situation where we will surely make less ag products available or at the least products available at higher costs to the consumer due to increased transportation costs.

If you allow PASHA to operate without the same stipulations put on Young Brothers of servicing marginally profitable ports such as Molokai and Lanai, and allow them to pick and choose the clients that they will transport cargo for, it will put an unfair burden on YB to be competitive and they will need to do away with the discounts on ag products that they transport.

PASHA can choose all the big shippers, like car manufacturers and construction materials, service them and even make it cheaper for these items to go between islands, but it will be at the expense of food products that require shipping in refrigerated containers and farm products. Taking away the cream from YB will kill agriculture on the Neighbor Islands, as then they really become uncompetitive with farmers on Oahu. I speak as a farmer from Oahu...it may even help my business, but as a native born Hawaii resident it is absolutely wrong! Things like Okinawan sweet potato from Molokai or the Big Island, Hamakua tomatoes from Hawaii, papayas from all islands, Maui gold pineapple, Kula strawberries, etc. ... all become to high priced for our restaurants to serve on their menus.

Oahu has 85% of the consuming population in the state, so farmers on the Neighbor Islands must have access to this market to survive. YB provides us with the cheapest mode of interisland transportaion, especially with their 30% agricultural discount. Our farmers have a hard enough time competing against Mainland produce and even the farmers on Oahu, I would think this would put the nail in the coffin to farming on the Neighbor Islands,...and there goes any talks of increasing agricultural food production, sustainability, and food security.

I don't know if our islands can sustain two cargo shipping companies operating in Hawaii, and I understand how we might want competition, but as legislators you must look at making sure these companies can be viable for the future of Hawaii. Ask yourselves is there enough business? do we want another Aloha airlines situation?

I thank you for the opportunity to testify. You may contact me on my cell at 479-1797, if you have any additional questions for me.

sincerely,

Dean J. Okimoto  
President, Nalo Farms, Inc.

Dear Senator Baker:

Here we go, Molokai is ignored again. We were ignored when the Super Ferry hearings did not include Molokai and Lanai, thus when Young Brothers, Ltd (YB) filed a docket in 2006 to discontinue Less than Container Load (LCL) freight from Kahului Harbor and eventually the rest of the state, the reaction on Molokai was one of horror. More than 90% of our freight is LCL, which would have left us in a big financial disaster. The reason given to discontinue LCL was to give dock space to the Super Ferry, thus YB was to lose its LCL space.

Pasha Hawaii's request to obtain a certificate of public convenience and necessity (CPCN) which the Public Utilities Commission (PUC) approved an interim decision, again puts Molokai and Lanai in crisis, faced with potential higher tariff rates and possible cut back in barge service.

On May 5, 2009 I wrote a letter as the president of Molokai Chamber of Commerce representing Molokai businesses to Carlito Caliboso, Chairman of the PUC opposing the Pasha Hawaii Docket No. 2009-0059. I cited in this docket, page 10, VII Service to the Public, which states "Pasha Hawaii's proposed inter-island service will benefit the people of Hawaii in many way," addressed only part of the "people of Hawaii." And that it did not benefit Molokai and Lanai, however we are also the "people of Hawaii." The docket was short sighted.

In closing I stated, "There will be adverse outcomes to our current freight service if this docket is approved as is. Therefore, we are asking the PUC to include Molokai and Lanai on its public hearing schedule. We would like an opportunity to be part of the "people of Hawaii" to comment on this docket at a public hearing on Molokai" My letter was ignored!

On September 30, 2009 I wrote a letter as the president of Molokai Chamber of Commerce to Roy Catalani, VP of YB, citing our concerns in Pasha's filing for a CPCN. I wrote that if Pasha's application is approved and if YB's economics of scale were to change so that the frequency of sailing's were reduced, Molokai would be face with a serious crisis; a food distributor's ability to get products to stores, a grocer's ability to keep food on the shelves all week, a farmer's ability to get their products to market given their harvest schedules, and the timely movement of corn seed to meet planting demand on the mainland and international destinations, would significantly hurt the community's health and welfare.

We ask your committee's support to demand that the PUC reconsider its decision to grant Pasha Hawaii an interim CPCN and to hold public hearings on all neighbor islands. The PUC's decision should have included all of the "people of Hawaii."

Respectfully,

Barbara Haliniak

President, Molokai Chamber of Commerce Foundation

President, The Business Depot Inc., Kaunakakai, Molokai





## Hawaii Food Industry Association

1188 Bishop St. Suit 608

Honolulu, HI 96813

The Hawaii Food Industry Association is an organization made up of retailers, wholesalers, manufacturers, and brokers.

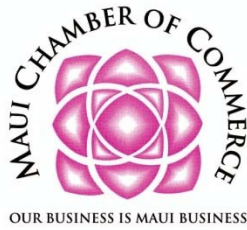
HFIA represents many neighbor island businesses that are greatly affected by the PUC's decision to alter the rules regulating inter-island carriers by changing from a CPCN (Certificate of Public Convenience and Necessity) requirement to carrier convenience.

HFIA is concerned with ensuring that all neighbor island ports receive an adequate supply of produce within the necessary time frame for food to remain safe and fresh.

It has come to our attention that Pasha does not offer any refrigerated services and that their vessels are only designed for roll on roll off equipment such as trucks and autos. It has also come to our attention that although Young Brothers is required to offer all lines of service, some of which are subsidized by others, Pasha will not be required to provide all lines of service. HFIA is concerned that the PUC's decision may hinder Young Brothers ability to subsidize less profitable lines of service and that this will negatively affect just in time delivery and even food security for some neighbor island areas.

Although HFIA has not taken a position on the PUC's ruling, we have passed a resolution asking that the **PUC hold public hearings on this matter on the neighbor islands**. It is our position that the neighbor islands should have been allowed more input prior to the PUC's decision and that **such input needs to be provided before any changes are made to the current system.**

Thank you for the opportunity to testify.



Testimony to the Senate Committee on Commerce & Consumer Protection  
Thursday, December 2, 2010 at 9:30 a.m.  
State Capitol, Conference Room 229

**Re: PUC's Interim Decision and Order on Docket No. 2009-0059**

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee:

We appreciate the hearing today to provide input on the recent Interim Decision and Order, issued on September 20, 2010, by the Public Utilities Commission (PUC) to grant Pasha Hawaii Transport Lines LLC a Certificate of Public Convenience and Necessity.

The Maui Chamber of Commerce is an organization whose mission it is to advance and promote a healthy economic environment for business; advocating for a responsive government and quality education, while preserving Maui's unique community characteristics. Approximately 90% of our membership is made up of small businesses, which we define for our membership purposes as those with fewer than 25 employees (half of the National definition of 50 employees).

For small businesses, simply surviving is a struggle because the sad truth is that typically only 50% even make it to the five year mark. That is the national average, before we even begin talking about the complexities and challenges of keeping a business afloat in island state; with increasing regulation; a high cost of doing business; escalating health, TDI and Unemployment Insurance costs; tightened financial markets; transportation issues; and a severely down economy. With these factions added to the mix, small business survival is not only a constant uphill battle, it requires extreme risk and can cost one their relationships, home, livelihood, retirement, savings, and more.

Now, add further uncertainties in getting products to market where transportation is a already a challenge and escalating costs and we may end up digging graves for additional small businesses. That is our concern here. Many businesses are fearful that the decision rendered by the PUC will require Young Brothers to take a hard look at areas served in Maui County and reduce their transportation service, increase their prices, or both; and we raise these concerns to you to intervene.

As a Chamber, we also identify and overcome obstacles that are detrimental to the business climate and community growth. In that vein, we also want to offer suggestions for improving this process which brought us here today.

Testimony to the Senate Committee on Commerce & Consumer Protection

Re: PUC's Interim Decision & Order on Docket No. 2009-0059

December 2, 2010

Page 2.

They include:

- **Transportation is an Essential Service.** We ask that the broad ramifications to businesses, agricultural producers, and residents be attended to when making decisions regarding transportation. Any reduction of service or increase in cost threatens business survival, our state's food and energy security, and consumers' needs and lifestyle. Harmful consequences must be identified and alleviated in advance, not through a trial period, especially not now.
- **Level the Playing Field.** The Maui Chamber of Commerce believes in and supports a competitive environment with a level playing field. Rules and standards should be equally applied, with the Rotary model of being "Fair to All Concerned" adopted.
- **Public Hearings Must Be Held.** On critical services like transportation, public meetings on the neighbor islands should be a requirement to help educate the public, hear concerns, address issues unique to neighbor islanders, and engage meaningful debate. Budgetary constraints may have hindered that from happening, but look at all of the time, effort, and money now being spent by numerous organizations to provide input. This needs to be rectified in the future.
- **Equitable Representation.** Neighbor islanders account for approximately half of the voting population in Hawaii and have a significant and growing impact on the State's food and energy sufficiency goals. We should have a seat at the table in all PUC decisions, but especially on decisions that hugely affect neighbor island businesses. It may be time to re-examine the structure of the PUC.

We appreciate the opportunity to share these thoughts and respectfully request your support in urging the PUC to revisit the process and their decision on this docket for the health of small, agricultural, and all businesses. The potential negative outcomes for businesses must fully understood and mitigated, otherwise we risk seeing more businesses put into the ground—a fate we would all prefer not to experience.

Thank you for your time and consideration. If you have any questions, please do not hesitate to contact me.

Sincerely,

Pamela Tumpap  
President

**Testimony of**

Stefanie Delmont

**President - Kona County Farm Bureau**

Before:

**Senate Committee on Commerce and Consumer Protection**

**The Honorable Rosalyn H. Baker, Chair**

**The Honorable Brian T. Taniguchi, Vice Chair**

December 2, 2010

9:30 am

State Capital, Conference Room 229

Informational Briefing regarding update on and information about the recent Interim Decision and Order issued on September 20, 2010, by the Public Utilities Commission in Docket No. 2009-0059, In re Application of Pasha Hawaii Transport Lines LLC for Issuance of a Certificate of Public Convenience and Necessity and Approval of its Local Tariff No. 1 for Service Between and Among the Ports of Honolulu, Kahului, Hilo and Nawiliwili..

Chairs Baker, Vice Chair Taniguchi and committee members:

Thank you for this opportunity to address your committee.

Aloha.

To small and not so small farmers and businesses the importance of available, dependable, regular and affordable rural inter island transportation cannot be underestimated. The Kona County Farm Bureau's view is that there are too many rumors and not enough information on the specifics of the PUC's ruling on Pasha's request for inter island routes. This leaves us uncomfortable and without some of the vital knowledge we need to make good business decisions for ourselves and our communities.

What has the PUC granted Pasha in terms of its routes? What, if anything, has the PUC required of Pasha in terms of services and other provisions that vary from what is now required of Young Bros.? If there are differences, what are the justifications as well as potential resulting impacts?

We are certainly not opposed to competition . Competition is the basis of our free market economy . On the other hand, the PUC needs to do an objective analysis of the concerns expressed by Young Bros. that the decision will lead to a decrease in service and an increase in cargo costs and factors behind Young Brothers statements that it may have to reduce its twice-weekly service to Hilo and Kawaihae.

The Hawaii County Council passed a resolution requesting hearings on the Big Island regarding the specifics of this decision by the PUC. The PUC, at least as stated in West Hawaii Today, said it had no plans for hearings. This is a public agency and we as the public do have a right for more information and for more clarity than has been provided so far.

The results of these decisions could have large impacts on farmers on the Island of Hawaii. I thank you for your time and consideration of our request for further information to be made public re: the PUC's decision.

# MAUI CATTLEMEN'S ASSOCIATION

*Maui Cattlemen's  
Association*

*PO Box 473*

*Kula, HI 96790*

*(808) 878-2660*

*Board of Directors  
and Officers*

*Brendan Baltazar*

*Harry Cambra*

*Alex Franco*

*Greg Freil*

*Jimmy Gomes*

*William G. Jacintho*

*John Kim*

*Mike Murakami*

*Amber Starr*

*Toni Thompson*

*Sustaining  
ranching  
communities in  
Hawaii*

## TESTIMONY

November 29, 2010

Submitted via email: Peggy Mierzwa     p.mierzwa@capitol.hawaii.gov

FROM: Maui Cattlemen's Association

TO: Senate Committee on Commerce and Consumer Protection  
Honorable Senator Rosalyn H. Baker, Chair  
Honorable Brian T. Taniguchi, Vice Chair

HEARING DATE:    Thursday, December 2, 2010, 9:30 am, Hawaii State Capital,  
Conference Room 229

CONCERN: Relating to informational briefing regarding update on, and information about the recent Interim Decision and Order issued on September 20, 2010, by the Public Utilities Commission in Docket No. 2009-0059, In re Application of Pasha Hawaii Transport Lines LLC for Issuance of a Certificate of Public Convenience and Necessity and Approval of its Local Tariff No. 1 for Service Between and Among the Ports of Honolulu, Kahului, Hilo, and Nawiliwili.

Thank you for the opportunity to discuss the potential impacts of the Interim Decision and Order on neighbor island residents and businesses.

The Maui Cattlemen's Association is a non-profit organization representing small and large livestock producers in Maui County. We fully support the Affidavit of Alan Gottlieb, President of the Hawaii Cattlemen's Council (HCC).

We see immediate problems with Pasha's application, by not serving all islands belonging to Maui County with any cargo.

We also see Pasha, selectively transporting profitable cargo with one-way routes, and not interested in transporting livestock and farm products chilled or frozen, to and from the other islands, leaving that for the current carrier Young Brothers Ltd. This domino effect results in leaving livestock and farm products back at the dock or at the farm, losing precious value waiting for full barge loads. This also creates much higher costs to keep livestock alive, and is a huge animal welfare concern.

In addition, the inter-island water carrier business is a capital-intensive business that requires maintenance and capital investments to keep the system going. If regulators add an uneven playing field, marked by selective cargo transport, best routes and best services, an enterprise will not thrive, and may not last. Unfair rules and unfair competition results in hurting consumers.

Equally important, these local companies rely on local investors. YB has spent millions of dollars over the past five years, and has had returns as low as one percent. Investors will not continue to keep and add substantial amounts of capital in a business that can't provide a decent return on its investment.

We humbly request that the Commission deny Pasha's application on the basis that it is not an equal application serving all islands to and from, and will hurt the livestock industry, the current carrier, and other local consumers.

You may contact Maui Cattlemen's Association President, William Jacintho, through the information provided above, or Vice-President, Amber Starr, at (808) 573-6444.

Thank you,

William Jacintho, President

Amber Starr, Vice President

# Moloka'i Community Service Council

Post Office Box 2047 • Kaunakakai, Hawai'i 96748

•Phone: 808-553-3244 •Fax: 808-553-3370 •E-mail: mcsc@molokai.org •Website: www.molokai.org

December 1, 2010

Honorable Rosalyn H. Baker, Chair  
Senate Committee on Commerce and Consumer Protection  
Hawai'i State Capitol, Room 230  
415 Beretania Street  
Honolulu, Hawai'i 96813

Re: PUC Interim D&O Allowing Pasha Hawaii Transport Lines to Serve Select Ports

Dear Senator Baker:

The PUC has granted permission for a new shipping company, Pasha Hawaii Transport Lines, to provide barge service to select ports on neighbor islands. Moloka'i is not one of those ports. Although the PUC apparently intends to assess whether a second shipping company would promote better rates through competition with Young Brothers, an accurate assessment will not be possible unless both companies serve the same islands. Smaller ports such as Moloka'i are not lucrative destinations for shipping companies, but they need regular barge service just as much as the larger islands.

Local Moloka'i businesses are justifiably worried that if Youth Brothers loses some of its market share to Pasha, YB will have to balance its books by cutting back on Moloka'i landings, or by asking for rate increases. Our non-profit organization relies on goods and services provided by our local vendors, and we also use barge services to ship items purchased from off-island vendors. We will be adversely impacted by cutbacks in the barge schedule, and by any increases in shipping rates.

We join with our neighbors in asking the PUC to reconsider its decision to allow Pasha to compete with Young Brothers only for selected ports. A fair competition would require Pasha to serve all ports, including Moloka'i.

Sincerely,

*Karen M. Holt*

Karen M. Holt  
Executive Director

Testimony of  
Peter Yukimura  
KOA Trading Company

Before:  
Senate Committee on Consumer Protection  
The Honorable Rosalyn H. Baker, Chair  
The Honorable Brian T. Taniguchi, Vice Chair

December 2, 2010  
9:30 am  
State Capital, Conference Room 229

**Informational Briefing regarding update on and information about the recent Interim Decision and Order issued on September 20, 2010, by the Public Utilities Commission in Docket No. 2009-0059, In re Application of Pasha Hawaii Transport Lines LLC for Issuance of a Certificate of Public Convenience and Necessity and Approval of its Local Tariff No. 1 for Service Between and Among the Ports of Honolulu, Kahului, Hilo and Nawiliwili..**

Chair Baker, Vice Chair Taniguchi and Committee Members:

Thank you for this opportunity to discuss to address your committee. I am the owner and President of KOA Trading Company, Kauai's Complete Grocery Distributor. My family has owned and operated this business since 1949.

I am currently travelling outside of the State of Hawaii and regret that I cannot present my testimony in person.

I submitted an affidavit to the PUC in the PUC proceedings on this matter. As far as I can tell, my testimony was not considered by the PUC. I attach a copy of my affidavit in which I explained my reasons for reaching the following conclusion:

“I do not believe that Pasha's application for a CPCN is fair, nor would it benefit the businesses on the Island of Kauai or the people of the State of Hawaii. If Pasha is allowed to cherry-pick from VB, I am concerned that it may jeopardize the services that we all truly do need. We currently have a water transportation system, utilizing VB, that works and provides the frequency and just-in-time service upon which my business and the Island of Kauai depend. The Pasha proposal adds nothing to this system and, in fact, jeopardizes the system we currently have and clearly need.”

Thank you for considering this critical issue and this opportunity to testify.



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
PASHA HAWAII TRANSPORT LINES LLC	)	DOCKET NO. 2009-0059
	)	
For Issuance of a Certificate of Public	)	
Convenience and Necessity and Approval of its	)	
Local Tariff No. 1 for Service Between and	)	
Among the Ports of Honolulu, Kahului, Hilo	)	
and Nawiliwili	)	
_____	)	

AFFIDAVIT OF PETER YUKIMURA  
IN SUPPORT OF YOUNG BROTHERS, LIMITED'S STATEMENT OF POSITION

STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

I, Peter Yukimura, first being duly sworn on oath, depose and say:

1. I am the owner and President of KOA Trading Company, Kauai's Complete Grocery Distributor. My family has owned and operated this business since 1949.
2. I submit this affidavit as an officer and on behalf of KOA Trading Company.
3. KOA Trading provides over 50% of Kauai's hotel and restaurant needs relating to food and beverage products.
4. As one of Kauai's largest distributors of the finest food and beverage products from all over the world, KOA Trading relies on frequent and efficient shipping to supply our customers regularly. We handle a large amount of both dry and refrigerated cargo. We primarily receive palletized cargo (recently over 100 pallets in a typical week), but we also receive goods packed in YB containers by our suppliers. More than half of that total is

refrigerated cargo. We bring in items from about 20 different shippers in the State via Young Brothers, including a substantial amount of perishable cargo through Unicold Corporation.

5. As a business owner and customer of Young Brothers, I have several concerns about the application by Pasha Hawaii Ltd. to obtain a certificate of public convenience and necessity (CPCN).

- a. I have serious questions as to whether Pasha will actually serve Nawiliwili “on inducement” as they state in their PUC application. Without regular sailings to Nawiliwili, Pasha’s proposal provides no direct benefits for companies on Kauai.
- b. If Pasha reduces the volume that our primary shipper (YB) handles statewide and starts to affect its bottom line, I believe it could affect YB’s ability to continue to provide the same level of services currently offered to Kauai.
- c. Even if Pasha does sail to Nawiliwili occasionally, their proposed bi-weekly schedule is too infrequent for my company’s needs. The frequency of sailings is a key service feature offered by Young Brothers that is important to our business model. The twice weekly sailings are crucial to replenish our inventory with “just-in-time” sailings. It is absolutely critical that this Commission understand that for our Island of Kauai, similar to the other islands of our State, warehousing space is very limited and adding substantial warehousing space would be prohibitively expensive. For this reason alone, the Commission must scrutinize the impacts of changing the basic economics of this system for an essential service provider such as YB.
- d. I also understand that Pasha’s application does not include refrigerated cargo services. Because KOA Trading ships a significant amount of the perishable goods consumed on Kauai, we would be unlikely to utilize a service like Pasha’s that does not offer refrigeration.

- e. In the case of Kauai, Pasha's proposed inter-island service will not be an alternative to Young Brothers. Kauai will remain dependent on Young Brothers. Therefore, any financial harm to Young Brothers – particularly anything that may affect their ability to provide affordable, regular, and frequent sailings – will result in direct harm to Kauai.
- f. My business depends on the comprehensive services that Young Brothers currently offers: state-wide shipping, for all types of cargos, refrigerated and dry, palletized and containerized – not just some ports or some cargo types. If a new competitor like Pasha significantly weakens YB's ability to provide its comprehensive lines of services, I fear that costs may rise as a result of YB losing business to Pasha.
- g. If the cost of shipping via YB does rise, KOA Trading will pass on those costs to our customers. I'm sure other distributors will do the same. As a result, food prices on Kauai will also rise.
- h. Alternatively, if YB's economies of scale were to change so that the frequency of sailings were reduced, the consistent, dependable and convenient service that we are used to will force us to add inventory, which will increase our cost of doing business.

6. I do not believe that Pasha's application for a CPCN is fair, nor would it benefit the businesses on the Island of Kauai or the people of the State of Hawaii. If Pasha is allowed to cherry-pick from YB, I am concerned that it may jeopardize the services that we all truly do need. We currently have a water transportation system, utilizing YB, that works and provides the frequency and just-in-time service upon which my business and the Island of Kauai depend. The Pasha proposal adds nothing to this system and, in fact, jeopardizes the system we currently have and clearly need.

7. For the foregoing reasons, I ask that you deny the Pasha application.

Further Affiant Sayeth Naught.

*Peter Yukimura*

PETER YUKIMURA

Subscribed and sworn to before me  
This 7<sup>th</sup> day of October 2009.

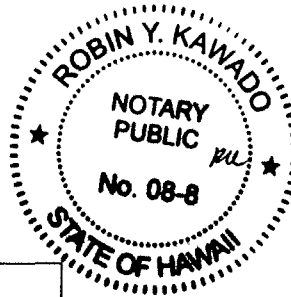
*Robin Y. Kawado*

Notary Public, State of Hawaii  
First Judicial Circuit

Name of Notary: *Robin Y. Kawado*

My Commission Number: *08-8*

My Commission expires: *January 20, 2012*



**NOTARY CERTIFICATION**

(Hawaii Administrative Rule ' 5-11-8)

Doc. Date: *October 7, 2009* # of Pages: *4*

Doc. Description: *Affidavit of Peter Yukimura in support of Young Brothers Hd's statement of position*

*Robin Y. Kawado* *10/7/2009*  
(Name of Notary) Date  
*First* Judicial Circuit



75-5737 Kuakini Hwy. Suite 208  
Kailua-Kona, HI 96740  
Phone: 329-1758 Fax: 329-8564  
www.Kona-Kohala.com info@kona-kohala.com

**Testimony to the Senate Committee on Commerce and Consumer Protection  
Thursday, December 2, 2010; 9:30 a.m.  
Conference Room 308**

**RE:** The recent Interim Decision and Order issued on September 20, 2010, by the Public Utilities Commission in Docket No. 2009-0059, In re Application of Pasha Hawaii Transport Lines LLC for Issuance of a Certificate of Public Convenience and Necessity and Approval of its Local Tariff No. 1 for Service Between and Among the Ports of Honolulu, Kahului, Hilo and Nawiliwili

Aloha Chair Baker and Members of this Committee,

My name is Vivian Landrum and I am the President/CEO of the Kona-Kohala Chamber of Commerce (KKCC). KKCC represents over 540 business members and is the leading business advocacy organization on the west side of Hawai'i Island. KKCC also actively works to enhance the environment, unique lifestyle and quality of life in West Hawai'i for both residents and visitors alike.

KKCC has reviewed the PUC's Interim Decision and Order to allow Pasha to operate as a water carrier of property between selected ports on Oahu, Maui, Kauai and Hawaii Islands. Noted in the Decision is the impetus for additional intrastate shipping options and to foster fair competition in the intrastate industry. The Decision states it will allow Pasha to operate "on an interim basis through December 31, 2013, which will enable the commission to gather actual data and relevant information .... to determine whether Pasha's intrastate operations will cause undue harm to the existing intrastate shipping industry or the public interest."

While KKCC supports competition in the business market, the playing field must be equal for all parties involved. We question whether this is being applied here. Servicing select ports that offer potential for a high rate on return versus servicing all ports, regardless of their income potential, appears unbalanced and unfair by forcing one player to subsidize unprofitable routes. This could, in turn, force one player to reduce or eliminate service routes. This would place Hawaii Island in jeopardy.

KKCC also questions the PUC's "try and see" attitude. Young Brothers, Limited is of vital importance to the shipping needs of the neighbor islands, providing consistent and reliable service to both Hilo and Kawaihae ports. Many local businesses, particularly agriculture, depend on this barge service for the import/export of their goods and supplies in a timely and dependable manner.

The structure of this Decision leaves open the potential for inconsistent and/or loss of service by forcing Young Brothers, Limited to re-evaluate their scope and scale of service statewide. If the PUC should wait until 2013 to conclude "harm" to the public interest has taken place, the negative impact will already have taken its toll on the many small businesses struggling to survive the current economic challenges. The members of the PUC should be reminded the neighbor islands, most especially Hawaii Island, are facing a much tougher climb out of this economic disaster than Oahu.

This Decision is a gamble for the neighbor island communities. Hawaii Island is not in a position to be part of the wager – the stakes are too high. Mahalo for the opportunity to submit our testimony.

Sincerely,

A handwritten signature in cursive script that reads "Vivian Landrum".

Vivian Landrum  
President/CEO

December 1, 2010

Honorable Rosalyn H. Baker, Chair  
Senate Committee on Commerce and Protection  
Hawaii State Capitol, Room 230  
415 South Beretania Street  
Honolulu, HI 96813

Dear Senator Baker,

Subject: PASHA INTERIM DECISION AND ORDER AND IMPACTS ON NEIGHBOR ISLAND COMMUNITIES

I write to you concerned for the farmers of Molokai and the community in general. The Molokai Homestead Farmers Alliance is very disappointed in the decision again made by Public Utilities Commission (PUC) to again forget about us. Though we are a small island with very few voices, every time a decision is made it is made by others that do not get drastically impacted like us the people of Molokai. We the farmers are outraged when we try to move forward sending product to the neighbor islands to once again get set back because of transportation issues. We can grow it, and have proven that, but PUC threatens business like ours by making decisions such as these without confiding in us.

I am well aware of YB's intension if PUC allows this to happen they will, mostly likely cut back barges reduce our food distribution incoming and outgoing. This will cripple us.

I thank you and your committee for looking at this matter and seeing how important PUC's decision is to us, all of us. PUC needs to hold public hearings on our island. This decision can make or break many of us farmers.

Mahalo,

Lynn DeCoite  
President, Molokai Homestead Farmers Alliance

President, L&R Farm Ent LLC



November 22, 2010

Public Utilities Commission  
State of Hawai'i  
465 South King Street, Room 103  
Honolulu, HI 96813

RE: Pasha Hawai'i Interim Decision & Order – PUC Docket #2009-0059

Dear Commissioners Caliboso, Cole, and Kondo:

KTA Super Stores prides itself on carrying a significant amount of foods produced on the Big Island, including fruits, vegetables, milk, eggs, lamb, and range-fed beef. Many items are marketed and sold under our Mountain Apple Brand® label, which is not only dedicated to food products grown, processed, or manufactured in Hawai'i, but also seeks to promote agricultural diversification locally.

But there is no denying the fact that Big Island residents also need and want things that cannot be produced here – food products as well as other types of goods and materials. In general, what we cannot get on our own island, we seek to get from the other islands first and foremost, before seeking other mainland or international sources. These products are typically transported interisland via barge.

As both a Big Island resident and as a businessman, I count on not only the affordability and reliability but also the frequency of interisland barge service currently provided by Young Brothers. In some senses, their service is the lifeblood of not only our economy, but of our lifestyle.

That is why I am very concerned with the PUC's recent decision to allow a major change in inter-island shipping. If Pasha Hawai'i is free to serve only Kahului and Hilo, and to capture some of the most profitable cargo which Young Brothers currently ships, it could have a negative impact on all Neighbor Islands, not just the smaller ones. With a reduced customer base to support their comprehensive infrastructure, Young Brothers would no doubt be forced to make some difficult decisions about service types and frequencies. I know this, because as a businessman, that is what I would have to do also.

Furthermore, it is my understanding that Pasha will not be offering refrigerated cargo services. In that case, Pasha Hawai'i cannot transport the vast majority of fresh food products, and therefore serves little purpose for the food industry.

I urge the PUC to do what is right. Reconsider your decision. Take a second look at what this decision may mean for all residents of Hawai'i, and particularly to those of us on the Neighbor Islands. At the very least, I hope that you will decide to re-open the discussion and hold public hearings on all islands. Surely, that is not too much to ask for a change of this magnitude.

Thank you for your attention to my concerns.

Sincerely,



Derek Kurisu  
Executive Vice President  
KTA Super Stores

- c. Consumer Advocate, Department of Commerce and Consumer Affairs  
335 Merchant Street, Room 326, Honolulu, HI 96813





October 15, 2010

Mr. Dean Nishina  
Division of Consumer Advocacy  
P.O. Box 541  
Honolulu, Hawaii 96809

Dear Mr. Nishina,

I am writing to you to introduce the services of Unicold Corporation as well as express my concerns relating to the Public Utilities Commission and their consent of Pasha's entry into Hawaii services.

Unicold Corporation is involved in refrigerated freight forwarding and warehousing servicing food distributors located on all islands of Hawaii. We are responsible for the movement of products from the West Coast Ports to our refrigerated warehouse in Honolulu where we tranship our inter-island shipments through the services of Young Brothers.

My understanding is that Pasha will not be a full service inter-island carrier that will only provide roll on, roll off shipping from Honolulu to Maui and Hilo then returning back to San Diego. Accordingly, the available revenues that are currently generated for these services will now be shared among two carriers and the overall consequences will have a definite negative impact. Young Brothers is Hawaii's only full service carrier therefore, with the entry of Pasha the end result will be either a reduction of service and or higher prices.

Hence, it is obvious that the aforementioned does not create a suitable situation for Unicold and its customers. If there is to be "competition", then everyone should be held to the same service requirements. As it stands, the business playing field becomes unequal and the final consequence will initiate a negative impact to the general public of Hawaii.

Sincerely,

Unicold Corporation

Darryl M. Kawano  
General Manager

CC: Carl Caliboso  
Public Utilities Commission

General Manager, Whirlpool Quality Express

Before:

Senate Committee on Commerce and Consumer Protection  
The Honorable Rosalyn H. Baker, Chair  
The Honorable Brian T. Taniguchi, Vice Chair

December 2, 2010

9:30 am

State Capital, Conference Room 229

Informational Briefing regarding update on and information about the recent Interim Decision and Order issued on September 20, 2010, by the Public Utilities Commission in Docket No. 2009-0059, In re Application of Pasha Hawaii Transport Lines LLC for Issuance of a Certificate of Public Convenience and Necessity and Approval of its Local Tariff No. 1 for Service Between and Among the Ports of Honolulu, Kahului, Hilo and Nawiliwili..

Chairs Baker, Vice Chair Taniguchi and committee members:

Thank you for this opportunity to address your committee.

Whirlpool Quality Express utilizes Young Brothers, Ltd. exclusively for inter island shipping of all major house hold appliances. It will be imperative that shipping cost be kept affordable, both for the shipper and for the consumer. Please review and consider all of the issues of Pasha's entry into this market and certify that shipping cost will be kept at the current shipping rates and do not affect the cost of outer island consumer goods, other than the fluctuation of current fuel costs.

We at Quality Express realizes that we will not, nor can we benefit from the movement of Pasha but will be effected tremendously by the cost increases by Young Brothers as they will have to increase their rates to compensate for the loss of a huge market share of inter island shipments.

Sincerely,  
Gary H. Watanabe



Green Point Nurseries, Inc.  
www.greenpointnursery.com

November 30, 2010

Testimony of  
Eric S. Tanouye  
Vice President and General Manager of Green Point Nurseries, Inc.

Before:  
Senate Committee on Commerce and Consumer Protection  
The Honorable Rosalyn H. Baker, Chair  
The Honorable Brian T. Taniguchi, Vice Chair

December 2, 2010  
9:30 am  
State Capital, Conference Room 229

**Informational Briefing regarding update on and information about the recent Interim Decision and Order issued on September 20, 2010, by the Public Utilities Commission in Docket No. 2009-0059, In re Application of Pasha Hawaii Transport Lines LLC for Issuance of a Certificate of Public Convenience and Necessity and Approval of its Local Tariff No. 1 for Service Between and Among the Ports of Honolulu, Kahului, Hilo and Nawiliwili..**

Chairs Baker, Vice Chair Taniguchi and committee members:

Thank you for this opportunity to discuss and to address your committee.

My name is Eric Tanouye, Vice President and General Manager of Green Point Nurseries on the Big Island of Hawaii. We are a grower and shipper of anthurium, other tropical cut flowers, foliage and plants.

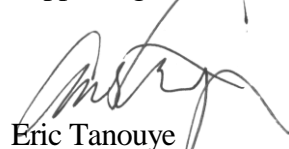
In regards to the addition of Pasha in carrying interisland cargo, it is important that this addition does not create a negative impact on our Inter island shipping routes and times. It is important that the frequency and availability of shipping times remain the same or increase to allow farmers to ship their perishable products in a timely arrival and keep the viability of Hawai'i agriculture to thrive.

If Pasha was to be allowed to become part of Hawaii's interisland shipping there needs to be adequate guarantees and "promises" on how they will operate. Currently Young Bros. is regulated on their shipping times, ports and schedules. Pasha will also need to be regulated to maintain the dependability of shipping. Currently through Hawaii Farm Bureau, Young Bros offers a 30% discount to farmers. This Young Bros' offering allows farmers from the neighbor islands to furnish local products in a timely and competitive manner, supporting local agriculture and the local economy.

Pasha as an additional interisland shipper will end up forcing change. Change can bring competition to interisland shipping and have the positive effect of increasing service to interisland shippers, allowing for greater flexibility. We can hope that this stimulates better service and in turn more opportunities. New opportunities are great but we need to be careful that we don't take a step forward, and then end up taking two steps back.

Thank you, once more for allowing me to bring up these topics of concern. If you have any questions, please feel free to contact me via email at [eric@greenpointnursery.com](mailto:eric@greenpointnursery.com), phone (808) 959-3535 ext 22.

Supporting Hawaii's Agriculture,



Eric Tanouye  
Vice-President/General Manager  
Green Point Nurseries

December 2, 2010

To: Senator Rosalyn Baker, Senate Committee on Commerce & Consumer Protection

RE: Young Brothers and Pasha

Public Testimony for December 2, 2010 Hearing

Lanai's businesses and its residents rely on Young Brothers. It has provided more than freight service to our island, it also provides a helping hand in countless ways to our community.

I am a board member of the Lanai Animal Rescue Center. During the past year, Young Brothers has offered our non-profit organization free freight to transport our cat food to Lanai. We have 250 cats in a park-like sanctuary and thanks to their kokua, we have been able to provide a safe setting for them and helped to protect our island's federally protected bird colonies as well.

I am the owner of Bennie's Farm, an 18-acre farm I started in 2003. It is the only commercial farm on the island. Although all of the produce the farm grows is sold on Lanai, I rely on Young Brothers to ship all of the supplies I need to Lanai.

In town hall meetings, residents have discussed diversified agriculture as a possible way to broaden our island's economic base. We cannot do this without a way to ship our goods to market. I know that if and when we can form a co-op of farmers, Young Brothers will be there to assist us.

I am the owner of *Lanai Today*, the only community newspaper on Lanai. It would not be economically feasible for me to continue printing my newspaper on Oahu if I did not have affordable freight service.

On a personal note, I've observed how Young Brothers has helped people in our community. Recently, Young Brothers provided the family of a deceased teacher free shipping to ship his huge collection of books to the University of Hawaii.

I've also noted how Young Brothers has taken care of its Lanai employees. With the recent downturn in the world-wide economy, it would have been easier for them to lay off their employees and to have them work reduced hours, just enough hours to service the once-a-week barge. Rather than do that, Young Brothers incurred the extra cost and time to send its Lanai employees to other ports to work, giving them full-time employment.

Pasha's entry into Hawaii will impact all of us. Young Brothers cannot be expected to continue serving small communities such as Lanai and Molokai without its bigger and more profitable ports defraying part of its costs.

We need your help, Senator Baker. Without Young Brothers providing weekly barge service to Lanai, our community will die.

Alberta S. de Jetley,

P. O. Box 630601, Lanai City, Hawaii 96763 email: [lanaitoday@yahoo.com](mailto:lanaitoday@yahoo.com) cell: (808)649-0808

November 30, 2010

PUBLIC UTILITIES COMMISSION  
456 South King Street, First Floor  
Honolulu, Hawaii 96813

Re: Pasha Interim Decision & Order, PUC Docket #2009-0059

Dear Commissioners,

My name is Kerry Honda and I represent Pine Isle Market, Ltd., an independent grocer on the island of Lanai. My family has served the community of Lanai City for nearly sixty years. We have seen the transition of freight rates from the early days of the Dole Pineapple Plantation barge to the current Young Brothers Barge.

During the early days when the Dole barge serviced the island, we were fortunate enough to be able to receive shipments up to four times a week at a fairly inexpensive rate. Our drawback was that the freight was not insured. At times some of the freight would arrive damaged and we would have to absorb or pass on the loss. As in current times, the weather played an important role in receiving our cargo.

When the Dole Pineapple Plantation closed its doors, Young Brothers stepped in to provide interrupted service to our island becoming our lifeline to the outer world.

When the Hawaiian Electric Company sold Young Brothers Barge to Salt Chuck, a mainland based corporation, their commitment held solid and they are still providing us with excellent service.

We are truly grateful for Young Brother's weekly service to Lanai. Although our port has to be subsidized by other ports, Young Brothers remains committed to the people of Lanai.

By allowing Pasha to be selective in the ports that they service and taking away profitable cargo that used to be handled by Young Brothers, will definitely unfavorably affect the current rates they charge. We do believe that competition is good but please let it be fair competition.

Respectfully,

Kerry Honda  
Pine Isle Market, Ltd.

**Senate Committee on Commerce and Consumer Protection**

Date: December 2, 2010

Time: 9:30 am

Place: Conference room 229

**Speaking in Strongest Possible Opposition to PUC Interim Decision and Order Granting Pasha Hawaii Transport Lines LLC a Certificate of Public Convenience and Necessity-Docket No. 2009-0059**

**Chair Senator Rosalyn H. Baker and Members of the Committee:**

My name is James E. Coon, President and CEO of Coon Brothers, Inc. Family of Companies, and Vice President of Lanai City Service, Inc. Speaking in the strongest possible opposition to PUC interim decision and order granting Pasha Hawaii Transport lines a Certificate of Public Convenience and Necessity-Docket No. 2009-0059.

We are one of the largest employers on the Island of Lanai, employing over 60 Lanai residents. Most of these people are heads of households and have no other work available to them. These past two years have been very difficult for Lanai with the downturn in the tourism economy. If we were to have a major negative change in economic viability of our only supplier of freight to Lanai, (Young Brothers) it would put our company at serious risk for survival.

As a company and as a community we depend on the weekly barge run by Young Brothers. This recent ruling by the PUC puts every business on Lanai and the Lanai community at risk. Young Brothers is the only company that brings freight to our community. We get a barge once a week, weather permitting. As it is the community often runs out of perishable goods before the week is through and the next barge comes in. Even though our freight expense is high, I am sure that if we had to pay the actual costs that Young Brothers absorbs to service our island, that it would be much higher. To allow Pasha to “cherry pick” the markets they want to service is not reasonable. It will put Young Brothers at financial risk and consequently our community of Lanai and our island businesses.

The State has said its policy is to support our isolated rural communities, yet decisions like this by the PUC run counter to the best interests of our State Policy and our communities. The policy within the Hawaii Water Carrier Act clearly states that service must be provided without “unjust discrimination, undue preference or advantage or unfair or destructive competitive practices”. The recent PUC Decision creates this very situation.

We need regular, frequent service by a carrier that can ship refrigerated goods, dry goods, construction equipment, vehicles, etc. to the Island of Lanai. Young Brothers has spent significant funds in infrastructure to supply Lanai. Young Brothers is very supportive of the Lanai Community and has for several years actually not even charged for shipping food to Lanai for certain special community events. They care about our community and service us well. Please do everything in your power to help reverse the unfortunate PUC ruling that will have such a serious consequence to our Island and many other communities. PUC has the right to reverse this interim authority if it sees significant adverse effect on YB.

Please do not wait until Young Brothers has lost so much money that they either cannot afford to give us the service we need to put pressure on the PUC to reverse this ruling.

Senator Baker and members of the Committee, we are very appreciative of your willingness to hold this hearing and your desire to help us. We are depending on you to do all you can to reverse this untimely and poorly thought out PUC decision.

If you have any questions, feel free to call me at: 808-870-9115

Sincerely,

James E. Coon, President  
Coon Brothers Inc.



Please submit this letter as testimony for the December 2, 2010 Senate Commerce and Consumer Protection Committee information briefing at 9:30 am in Conference Room 229.

From: Jeffrey S. Egusa, President & General Manager  
Friendly Market Center, Ltd.  
Kaunakakai, Moloka`i

Re: Decision by the Public Utilities Commission in Docket No. 2009-0059, Application of Pasha Hawaii Transport Lines for Issuance of a Certificate of Public Convenience and Necessity and Approval of its Local Tariff No. 1 for service between the ports of Honolulu, Kahului, Hilo and Nawiliwili.

Dear Senator Rosalyn H. Baker,

Friendly Market Center has been a retail grocery store located in Kaunakakai serving the people of Molokai since 1953.

The PUC decision to allow PASHA to compete for interisland shipping business but with “cherry picking” privileges, both shocked and disappointed us here on Molokai. Last year, Friendly Market and other businesses wrote to the PUC to express our concerns about Pasha trying to compete unfairly with Young Brothers. But the PUC ignored us and approved the plan without even a public hearing.

Young Brothers Ltd, as a PUC regulated entity, has been required to provide service to all islands as a critical need. For decades Young Brothers has been delivering staples such as fresh milk, produce, canned foods, feed, building materials, etc for both businesses and residents. We are thankful that HTYB, as a whole, is a profitable business knowing quite well that shipping to Molokai is not a profitable stop. Why should Pasha be allowed to pick only the most profitable ports to do business in and leave business at smaller, “break-even or below cost”, ports for Young Brothers to carry alone. If PASHA wants into the shipping market then they should abide by the same terms imposed on Young Brothers by the PUC; that is shipping all commodities to ALL islands.

Friendly Market Center is seriously concerned that our interisland barge service will destabilize resulting in higher shipping costs, reduction in service days, elimination of the “less than container load” option, or loss of barge service all together. Please require the PUC to reconsider its decision and in the very least, hold public hearings on all islands before allowing Pasha to operate.

Thank you for your kind attention.

Respectfully,

Jeffrey S. Egusa

Committee on Consumer Protection  
Attn: Senator Rosalyn Baker

This letter is in regards to the recent Interim Decision and Order issued on September 20, 2010 by the Public Utilities Commission in Docket No. 2009-0059 and the Application of Pasha Hawaii Transport Lines LLC for Issuance of a Certificate of Public Convenience and Necessity and Approval of its Local Tariff No. 1 for Service Between and Among the Ports of Honolulu, Kahului, Hilo, and Nawiliwili.

Dear Senator Baker,

I am writing you in concern of the ruling in favor of Pasha to be approved to ship cargo to limited ports and schedules in the State of Hawaii. I do NOT think it is fair for one carrier to be forced to service all ports (Young Brothers) while another carrier (Pasha) will be granted the ability to service only the ports they choose and when they choose to do so. This would mean that Pasha would not need to service certain ports every week. This decision will not help the majority of neighbor islanders who ship goods and cargo every week from the outer islands to Oahu. It will only benefit a few, including Pasha's bottom line. I hope you consider NOT allowing Pasha to do limited services to Hawaii. If you approve of Pasha's request, it will force Young Brothers to reconsider its Ports of Call and local agricultural discounts that help our neighbor island farms and businesses stay in business, and will result in higher shipping costs to all of Hawaii's residents.

Sincerely,  
James L. "Kimo" Pa

Kimo Pa Big Island Container Sales & Rentals, LLC.  
421 Lama Street Hilo, Hawai'i 96720  
Office: (808)981-0805  
Fax: (808)981-0756  
Phone: (808)960-1058  
[www.bigislandcontainer.com](http://www.bigislandcontainer.com)



kevin misaki  
<kevmisaki@gmail.com>  
10/15/2010 08:24 AM

To public utilities commission <hawaii.puc@hawaii.gov>  
cc  
bcc  
Subject pasha entry to market

to mr caliboso,

i'm writing to express my concerns regarding pasha entry into the interisland shipping market. i am definitely supportive of open competition, however young bros. says it consequences will impact all the small shipping ports.our store,misakis inc,located on the island of molokai,depends on young bros to ship 100% of our products. any kind of reduced shipping will negatively impact our business. misakis needs to have at least the same service available at present to continue our business. thank you for listening to our concerns. aloha, kevin misaki vp

November 29, 2010

State of Hawaii Public Utilities Commission  
Department of Budget and Finance  
465 South King Street  
Kekuanao'a Bldg, First Floor  
Honolulu, HI 96813

RE: PUC Decision on Docket #2009-0059

Dear Commission:

We residents and merchants of Molokai are writing to express our opposition to Pasha being allowed to open business servicing Hilo, Kahului, and possibly Nawiliwili ports, without being required to service Molokai or Lanai. In light of the fact that the PUC did not hold public hearings, we ask the PUC to at least reconsider this decision and hold public hearings immediately.

Cargo service is crucial to all Hawaii residents – regardless of which island they live on. Our community on Molokai relies heavily on YB's regular, twice weekly barge service. A majority of our goods arrive via YB barge. We have worked with YB and public officials in maintaining LCL service and two sailings per week and yet, after all of this and after making our positions clear earlier in this case, the PUC has chosen to ignore us and refuse us even a chance to be heard. Despite the small size of our community, residents of Molokai should be treated as equal partners in determining the fate of any proposal that risks disrupting or changing a vital service like interisland shipping.

There is only a fixed amount of shipping business in Hawaii. We are concerned that a long time reliable business such as YB may be destabilized by unfair competition. Although competition is usually a good thing, Pasha is "cherry picking" the profitable ports and leaving the smaller, "breakeven or below cost" ports for YB to carry alone. Pasha also will not ship refrigerated cargo or livestock, or provide an agricultural discount, which YB offers. Without that agricultural discount, farmers may not be able to ship their goods out, and local retailers and consumers would have less access to locally grown food.

If Pasha wants to compete for business with YB, then they should have to live up to the same obligations as YB. We do not believe that the PUC has looked carefully at this issue from the view of neighbor island residents and businesses. Otherwise, the PUC would have been more careful about listening to neighbor island residents and about the risks of changing the economics of interisland cargo service and leaving some customers with little service or no service.

Residents of Molokai have a lot at stake. We face losing the only barge service we have, if the changed economics of interisland shipping forces YB to change its services to our islands.

The PUC should reconsider this decision and schedule public hearings on all islands.

Sincerely, *The following are businesses:*

<u>PRINT NAME</u>	<u>SIGNATURE</u>	<u>COMPANY</u>	<u>ADDRESS</u>
1. George Kahina	<i>[Signature]</i>	MK SERVICES	POB 733 Kaimakaha, Molokai 96748
2. JEFFREY EGUSA	<i>[Signature]</i>	FRIENDLY MKT CENTER	Box 1919 Kilauea, Molokai 96748

**RE: PUC Decision on Docket #2009-0059**

PRINT NAME	SIGNATURE	COMPANY	ADDRESS
1. Beverly Boyers	<i>[Signature]</i>	Atlas Bldg Supplies	PO Box 500 K'kai 96748
2. Jon Sabsta	<i>[Signature]</i>	Molokai Light Sud	POB 2045 " 96748
3. Proho Alcon	<i>[Signature]</i>	Proho's Auto	Box 1290 K'kai 96748
4. Melody Mem man	<i>[Signature]</i>	Proho's Auto	Box 1290 K'kai 96748
5. Karen Takata	<i>[Signature]</i>	GT Auto Repair	Box 516, K'kai 96748
6. Glenn Takata	<i>[Signature]</i>	Kaunakakai Auto Parts	Box 25 K'kai 96748
7. MARIA GWATANABE	<i>[Signature]</i>	Imports Gift Shop	P.O. Box 828 K'kai HI 96748
8. LINDA JOHNSTON	<i>[Signature]</i>	Molokai Art & Design	POB 1443 K'kai
9. BURKE TOTTEROU	<i>[Signature]</i>	KAIMOHI DIST	P.O. Box 8 K'kai 96748
10. Judith Egusa	<i>[Signature]</i>	friendly properties	P.O. Box 278 Kaunakakai 96748
11. PATRICIA AUGUSTA	<i>[Signature]</i>	BIRRENNAS	PO BOX 1614 K'KAI 96748
12. Blossom Poeper	<i>[Signature]</i>	Kanemitsu Bakery	Box 26 K'Kai
13. Allen Beard	<i>[Signature]</i>	MOLOKAI WTR'S & SPTS	Box 240 K'KAI
14. Rasita Martin	<i>[Signature]</i>	C. Pascua Store	P.O. Box 1693 K'kai
15. Reynaldo C. Oriedo	<i>[Signature]</i>	Oriedo's Lunch Counter	Box 1031 K'kai HI 96748
16. G.M.K. Catering	<i>[Signature]</i>	Greig Lee Wai	P.O. Box 804 K'kai HI 96748
17. Hawley May Greenleaf	<i>[Signature]</i>	Wagdy Jay	P.O. Box 99 H'kai HI 96749
18. Baron Okimoto	<i>[Signature]</i>	Baron Okimoto	P.O. Box 218 K'kai HI 96748
19. Ed. Medeiros	<i>[Signature]</i>	Hagiyaki	52 Ala Manoa 96748
20. Jon Mikami	<i>[Signature]</i>	Mikami Molokai	28 Kaimo St. 96748 Dunbar K'kai

	<u>PRINT NAME</u>	<u>SIGNATURE</u>	<u>COMPANY</u>	<u>ADDRESS</u>
3.	Barbara Helaniak		Dept of Commerce	PO Box 976 K'Kai 96748
4.	Garrett Kamehaha		TAKE'S	Box 1890 K'Kai 96748
5.	KEVIN MISAKI		MISAKI'S LAI	PO BOX 69, K'Kai, HI 96748
6.	LYNDON DELACRUZ		SIMON & FRINGS	PO Box 144 K'Kai 96748
7.	Sherron Dudoit		Righteous Ink Tattoo	64 Ala Malama 96748 PO BOX
8.	Tanya Woods		Kalele Bookstore	64 Ala Malama K'Kai PO Box 490 Hoolehua HI 96729
9.			Area 20, Inc	Box 1589 K'Kai 96748
10.	Mel Chy		Meilin Chyung	Box 1008 K'Kai 96748

- cc. Governor-Elect Neil Abercrombie
- State Senator J. Kalani English
- State Representative Mele Carroll
- Div. Of Consumer Advocacy, Dept of Commerce and Consumer Affairs
- Mayor-elect Alan Arakawa
- Council member Danny Mateo

November 29, 2010

State of Hawaii Public Utilities Commission  
Department of Budget and Finance  
405 South King Street  
Kekuanao'a Bldg, First Floor  
Honolulu, HI 96813

RE: PUC Decision on Docket #2009-0059

Dear Commission:

We residents and merchants of Molokai are writing to express our opposition to Pasha being allowed to open business servicing Hilo, Kahului, and possibly Nawiliwili ports, without being required to service Molokai or Lanai. In light of the fact that the PUC did not hold public hearings, we ask the PUC to at least reconsider this decision and hold public hearings immediately.

Cargo service is crucial to all Hawaii residents - regardless of which island they live on. Our community on Molokai relies heavily on YB's regular, twice weekly barge service. A majority of our goods arrive via YB barge. We have worked with YB and public officials in maintaining LCL service and two sailings per week and yet, after all of this and after making our positions clear earlier in this case, the PUC has chosen to ignore us and refuse us even a chance to be heard. Despite the small size of our community, residents of Molokai should be treated as equal partners in determining the fate of any proposal that risks disrupting or changing a vital service like interisland shipping.



There is only a fixed amount of shipping business in Hawaii. We are concerned that a long time reliable business such as YB may be destabilized by unfair competition. Although competition is usually a good thing, Pasha is "cherry picking" the profitable ports and leaving the smaller, "breakeven or below cost" ports for YB to carry alone. Pasha also will not ship refrigerated cargo or livestock, or provide an agricultural discount, which YB offers. Without that agricultural discount, farmers may not be able to ship their goods out, and local retailers and consumers would have less access to locally grown food.

If Pasha wants to compete for business with YB, then they should have to live up to the same obligations as YB. We do not believe that the PUC has looked carefully at this issue from the view of neighbor island residents and businesses. Otherwise, the PUC would have been more careful about listening to neighbor island residents and about the risks of changing the economics of interisland cargo service and leaving some customers with little service or no service.

Residents of Molokai have a lot at stake. We face losing the only barge service we have, if the changed economics of interisland shipping forces YB to change its services to our islands.

The PUC should reconsider this decision and schedule public hearings on all islands.

Sincerely,

PRINT NAME	SIGNATURE	COMPANY	ADDRESS
1. Dayna Harris		Molokai Vacation Properties	HCO1 Box 26 KKA 967
2. Patricia Quay		Molokai Gifts + Things	HCO1 Box 28 KKA 967

November 29, 2010

State of Hawaii Public Utilities Commission  
Department of Budget and Finance  
465 South King Street  
Kekuanao'a Bldg, First Floor  
Honolulu, HI 96813

RE: PUC Decision on Docket #2009-0059

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The PUC should reconsider this decision and schedule public hearings on all islands.

Sincerely,

*THE FOLLOWING ARE RESIDENTS*

<u>PRINT NAME</u>	<u>SIGNATURE</u>	<u>COMPANY</u>	<u>ADDRESS</u>
1. <i>Brandon Rogacio</i>	<i>[Signature]</i>		<i>PO Box 1332 Eka'i HI 96748</i>
2. <i>Keela Wright</i>	<i>[Signature]</i>		<i>PO. Box 1300 Kaka'i HI 96748</i>



November 24, 2010

State of Hawaii Public Utilities Commission  
Department of Budget and Finance  
465 South King Street  
Kekuanao'a Bldg, First Floor  
Honolulu, HI 96813

RE: PUC Decision on Docket #2009-0059

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The PUC should reconsider this decision and schedule public hearings on all islands.

Sincerely,

	<u>PRINT NAME</u>	<u>SIGNATURE</u>	<u>COMPANY</u>	<u>ADDRESS</u>
1.	Maka Cobb Adams	<i>M. Cobb Adams</i>		POB 1665 Kaunakakai 96748
2.				

November 29, 2010

State of Hawaii Public Utilities Commission  
Department of Budget and Finance  
465 South King Street  
Kekuanao'a Bldg, First Floor  
Honolulu, HI 96813

RE: PUC Decision on Docket #2009-0059

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Sincerely,

	PRINT NAME	SIGNATURE	COMPANY	ADDRESS
1.	Amy Skarlan	<i>Amy Skarlan</i>		Thrup 1575 K'kai
2.	Kiyoshi	WATANABE		Box 607 K'kai

November 29, 2010

State of Hawaii Public Utilities Commission  
Department of Budget and Finance  
465 South King Street  
Kekuanao'a Bldg, First Floor  
Honolulu, HI 96813

RE: PUC Decision on Docket #2009-0059

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The PUC should reconsider this decision and schedule public hearings on all islands.

Sincerely,

	<u>PRINT NAME</u>	<u>SIGNATURE</u>	<u>COMPANY</u>	<u>ADDRESS</u>
1.	Nalia Reyes	<i>Nalia Reyes</i>	FMC	P.O. BOX 2066 IC 'IKAI
2.	Kahiau Lima	<i>Kahiau Lima</i>	FMC	P.O. BOX 482225 96748

RE: PUC Decision on Docket #2009-0059

PRINT NAME	SIGNATURE	COMPANY	ADDRESS
1. <u>Uybil K. Lopez</u>	<i>[Signature]</i>		PO Box 952 K'kai, HI 96748
2. <u>Tuesday Rojas</u>	<i>[Signature]</i>		K'kai, HI
3. <u>Michelle Kalipi</u>	<i>[Signature]</i>		PO Box 1660 K'kai 96748
4. <u>Bronson Kalipi</u>	<i>[Signature]</i>		P.O. Box 1660 K'kai 96748
5. <u>Pua Luvise Pua Luvise</u>	<i>[Signature]</i>		Hc-1 Box 235 K'kai 96748
6. <u>Judy Mucami</u>	<i>[Signature]</i>		B 558 K'kai HI 96748
7. <u>John Pearson</u>	<i>[Signature]</i>		Box 1294, K'kai
8. <u>Karen L. Silva</u>	<i>[Signature]</i>		P.O. 272 K. Kai 96748
9. <u>Daniel Sharrock</u>	<i>[Signature]</i>		P.O. Box 1524 K'kai HI 96748
10. <u>Roblen Taloni</u>	<i>[Signature]</i>		PO Box 1524 K'kai HI 96748
11. <u>Makamae Akiona</u>	<i>[Signature]</i>		PO BOX 781 K'kai HI 96748
12. <u>Judy Pica-Spencer</u>	<i>[Signature]</i>		PO Box 466 K'kai HI 96748
13. <u>Hui Mokiio</u>	<i>[Signature]</i>		P/O BOX 2074 K'kai 96748
14. <u>Pore Ceston</u>	<i>[Signature]</i>		P.O. 272 96748
15. <u>Chu Nui</u>	<i>[Signature]</i>		2074 K'kai
16. <u>Awaikiia Mowat</u>	<i>[Signature]</i>		PO. Box 315 K'kai HI 96748
17. <u>Cedric M. Alamo</u>	<i>[Signature]</i>		PO. Box 122 K'kai HI 96748
18. <u>Anne Skirke</u>	<i>[Signature]</i>		P.O. Box 1885, K'kai HI 96748
19. <u>Amanda Hokkanen</u>	<i>[Signature]</i>		PO Box 183 96748
20. <u>Steve Edrpo's</u>	<i>[Signature]</i>		Hc-1 Box 541 B-201 96748

RE: PUC Decision on Docket #2009-0059

PRINT NAME	SIGNATURE	COMPANY	ADDRESS
1. Julie Lopez	<i>[Signature]</i>		PO Box 35 Kuaia 96757
2. Shirley Burrows	<i>[Signature]</i>		PO Box 1525 K'kai HI 96748
3. Stephanie Lauhi	<i>[Signature]</i>		PO Box 36 K'kai HI 96748
4. Sunshine Puao	<i>[Signature]</i>		PO Box 2023 K'kai HI 96748
5. Fred Maunero	<i>[Signature]</i>		P.O. Box 1693 K'kai HI 96748
6. <del>Erin Young</del>	Bonnie K. Young		PO Box 1496 K'kai
7. Keala Oshiro		KEALOHA KANAWAIWAI	Box 553 K'kai HI 96748
8. Diane Lindsey	<i>[Signature]</i>		Bx 948 K'kai
9. Eden Carney	<i>[Signature]</i>		Bx 1254 K'kai 96748
10. Jan Thomas	<i>[Signature]</i>		P.O. Box 1751 K'kai 96748
11. Gary Po	<i>[Signature]</i>		PO Box 100 A-4 K'kai 96748
12. Cliff Cabrera	<i>[Signature]</i>		PO Box 116 K'kai HI 96748
13. Michael E. Jucer	<i>[Signature]</i>		PO Box 139 Kuaia HI 96729
14. Craig K. Lucas	<i>[Signature]</i>		PO Box 139 K'kai HI 96748
15. Nichol Rite-Maranan	<i>[Signature]</i>		PO Box 2036 K'kai HI 96748
16. HEICA KAUAI	<i>[Signature]</i>		PO Box 1966 K'kai HI 96748
17. Ming Nersona	<i>[Signature]</i>		P.O. Box 828 K'kai 96748
18. Nelson Hamilton	<i>[Signature]</i>		P.O. Box 946 K'kai HI 96748
19. Kelly Hamilton	<i>[Signature]</i>		PO Box 23 96729
20. Mollie Loo	<i>[Signature]</i>		PO Box 1971 K'kai 96748

## RE: PUC Decision on Docket #2009-0059

PRINT NAME	SIGNATURE	COMPANY	ADDRESS
1. Nakeno Gonzalez	<i>Nakeno Gonzalez</i>		Box 896 K'kai
2. Bonnie Luaka	<i>Bonnie Luaka</i>		He Ol Box 681 K'kai
3. Andrew Kulodit	<i>Andrew Kulodit</i>		366 Kapanui Pl. Wai, HI 96793
4. Copy Santos	<i>Copy Santos</i>		295 <del>Ma</del> Oluia Dr. K'kai HI 96732
5. Josie Rillon	<i>Josie Rillon</i>		PO Box 235 Kpm
6. Malia Kahalenuai	<i>Malia Kahalenuai</i>		PO Box 774 K'kai 96748
7. Erika Hillm	<i>Erika Hillm</i>		PO Box 500 Kookhua, HI 96729
8. Jenica Janaki	<i>Jenica Janaki</i>		PO Box 482219, Kaunakakai, HI
9. Kenneth Gonzalez	<i>Kenneth Gonzalez</i>		PO Box 431 K'kai 96748
10. Shyllyn Stone	<i>Shyllyn Stone</i>		P.O. Box 1205 K'kai HI 96748
11. Douglas Rogers	<i>Douglas Rogers</i>		PO - Box 1279 K'kai HI 96748
12. <del>James</del>	<del><i>James</i></del>		PO Box 330408, Kahului HI 96733
13. <del>ASTORIA FINTEG</del>	<del><i>ASTORIA FINTEG</i></del>		PO Box 1918 K'kai, 96748
14. <del>John</del> <i>Shocke E. Steakey</i>	<i>Shocke E. Steakey</i>		PO Box 1021 K'kai 96748
15. <del>Kelly</del> <i>Cabarting Kelly Cabarting</i>	<i>Kelly Cabarting</i>		PO Box 1565 K'kai 96748
16. <del>Phyllis</del> <i>Stacy</i>	<i>Phyllis Stacy</i>		K'kai
17. <del>Leslie</del> <i>Steakey</i>	<i>Leslie Steakey</i>		K'kai 96748
18. <del>Wendy</del> <i>Kim</i>	<i>Wendy Kim</i>		MLOO HI 96770
19. <del>Ernest</del> <i>Reonnel</i>	<i>Ernest Reonnel</i>		K. Kai
20. <del>RETARNA</del> <i>HORNER</i>	<i>RETARNA HORNER</i>		Honolulu 96709

**RE: PUC Decision on Docket #2009-0059**

PRINT NAME	SIGNATURE	COMPANY	ADDRESS
1. Paula Kakaio		PK Enterprises	K'Kai
2. Russ Kakaio		"	K'Kai
3. Shenes Spencer			PO Box 488, K'Kai HI 96748
4. Margaret Kalam			PO Box 1205
5. <del>Patricia</del>		PO Box 1717	K'Kai, 96748
6. Shaeraldo Manosa		PO Box 149	M'loa
7. GEORGE RIBERAL		PO Box 1598	K'KAI 96748
8. Dennis N. Kethakis		P.O. Box 186	Kualoa 96755
9. Rollanda Faraon			Halehale HI 96755
10. Dorcen Galam		P.O. Box 1495	K'KAI 96748
11. Teal K Valdez		PO. Box 382	K'KAI
12. Heidi Horcajo		PO. Box 1260	K'Kai HI, 96748
13. Lennie Corrao		PO Box 495	H'ua 96729
14. Kalmar Clow		Box 76	96748
15. Kathy Puaa		PO BOX 43	K'KAI, HI 96748
16. Danelynn Kaai		PO BOX 13	K'KAI, HI 96748
17. Kathrine Luulog-Chang		P.O. Box 252	K'Kai, HI 96748
18. Jibbi Niale		PO Box 63	K'Kai 96748
19. Linda Oishi		P.O. Box 13	V'Kai 96748
20. David Kama		Hawaii Plast + Drywall	2741 Kauapaka Rd Halekua HI 96708

RE: PUC Decision on Docket #2009-0059

	PRINT NAME	SIGNATURE	COMPANY	ADDRESS
1.	Francis M...	[Signature]	FMC	
2.	Ted...	[Signature]	FMC	
3.	Lehua Wright	[Signature]	Fmc	
4.	Rose Pettigrew	[Signature]	Individual	K'kai 96748
5.	DIANE DUFFY	[Signature]	ABI	K'Kai 96748
6.	JOANN BOIS MAWAS	[Signature]		KKAI HI 96748
7.	Louise L. S...	[Signature]	Ken of Spring (FMC)	KKAI HI 96749
8.	[Signature]	[Signature]	Individual	Kakai 96786
9.	EARL NAKAMURA	[Signature]	Earl Nakamura	Box 492 K'Kai
10.	Roger J...	[Signature]		K'kai 96748
11.	John E...	[Signature]		K'kai HI 96748
12.	AVELINA R PONCE	[Signature]	Avelina Ponce	k'kai HI 96748
13.	Elma Smith	[Signature]		P.O. Box 1272 K'Kai
14.	Cora Smith	[Signature]		P.O. Box 1272 K'Kai
15.	CAROL TAYLOR	[Signature]		P.O. BOX 171 K'KAI
16.	Jeffery Lane	[Signature]		P.O. BOX 171 K'KAI
17.	Patricia Bond	[Signature]		Box 1011 K'Kai
18.	Renee Albino	[Signature]	Renee Albino	Box 264 K'Kai
19.	Julian...	[Signature]		P.O. BOX 1822 K'KAI
20.				



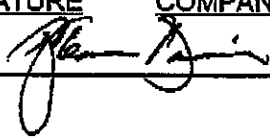
RE: PUC Decision on Docket #2009-0059

	PRINT NAME	SIGNATURE	COMPANY	ADDRESS
1.	Stefani Bush	<i>[Signature]</i>	FriendlyMkt Center	PO Box 311 96748
2.	Meg Fox	<i>[Signature]</i>	DOE	PO Box 11685 96748
3.	M/M Richard Reed	<i>[Signature]</i>	Moldani Enterprises	PO Box 1107 Kilauea
4.	Rick Gil	<i>[Signature]</i>	Summit	1000 Kane Hwy #232
5.	John Samia	<i>[Signature]</i>	Moldani Enterprises	1000 Kane Hwy #232
6.	Arsenia Mariglet	<i>[Signature]</i>	FMC	PO Box 1392 96748
7.	Daniel Almeida	<i>[Signature]</i>	Best Kind Plumbing	195 Ahi 96748
8.	Neomi Duvauchelle	<i>[Signature]</i>		Box 884 - Kilauea 96748
9.	Bono	<i>[Signature]</i>	Hillcrest	PO Box 420 Kilauea 96748
10.	<del>Keith</del>	<del><i>[Signature]</i></del>	Mac Rowling	Mac Rowling P.O. Box 1220 Kilauea
11.	Hol Cavanaugh	<i>[Signature]</i>		P.O. box 190 m'loa Hilo
12.	Donalei Cavanaugh	<i>[Signature]</i>		P.O. box 190 m'loa
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**RE: PUC Decision on Docket #2009-0059**

	<u>PRINT NAME</u>	<u>SIGNATURE</u>	<u>COMPANY</u>	<u>ADDRESS</u>
1.	GLORY	<i>Robena</i>		P O Box 1856
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**RE: PUC Decision on Docket #2009-0059**

	<u>PRINT NAME</u>	<u>SIGNATURE</u>	<u>COMPANY</u>	<u>ADDRESS</u>
1.	Glenn Davis		S&F	225 Seaside Pl.
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**RE: PUC Decision on Docket #2009-0059**

	<u>PRINT NAME</u>	<u>SIGNATURE</u>	<u>COMPANY</u>	<u>ADDRESS</u>
1.	Geri Adolpho	Gadolpho	PO Box 153	Hoolehua
2.	George Kahinu III	George Kahinu III		K'Kau
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"Steve Dearing"  
<steve.dearing@hotmail.com>  
>

10/21/2010 01:23 PM

To <hawaii.puc@hawaii.gov>

cc

bcc

Subject PASA DOCKET 2009-0059

Attention: Carl Caliboso

I am the owner of Palms of Hawaii and we have shipped large (field grown) palms through out the State of Hawaii for over twenty five years . Palms of Hawaii has supplied many commercial projects like the State Convention Center in Waikiki and currently is supplying coconut palms to Disney's Hawaii Vacation Project on Oahu. Over the years, I have had meetings and discussions with Young Brothers Management explaining interisland shipping problems Palms of Hawaii has encountered that adversely impacted business . Over the years, the problems were addressed by Young Brothers and issues resolved that benefited business and public interests in many ways. Previous PUC rulings have adversely impacted my business and limited sales to the Big Island for several years. Not only was my business and contractors adversely affected but other businesses and their employees were impacted as well . Again we have a PUC ruling that will adversely impact interisland shipping for the State of Hawaii . I agree that competition is good for price controls and better service on a level playing field . The PUC needs to supply a level playing field that interisland shippers compete on because any ruling that by nature is unfair will have profound adverse affect on business and residents alike . If this PUC Ruling is allowed to stand, it will destabilize interisland shipping and again have an adverse impact on business in the State of Hawaii.

Sincerely  
Steve Dearing  
Palms of Hawaii  
808-936-8912

As a homeowner on the small island of Lanai, I am much concerned about the possibility of the Pasha Group encroaching upon the Young Brothers' ability to serve our residents at a reasonable price. If the Young Brothers are left with only the smallest ports to service, they will have to charge them exorbitant fees in order to stay in business. We need a solution that is fair to ALL concerned: Pasha Group, Young Brothers, AND small islanders. Please consider us in your deliberations. Thank you,  
Judith V. Earl, 270 Kauna 'oa Drive, Lanai City, Lanai



## Hawai'i State Legislature

STATE CAPITOL  
HONOLULU, HAWAII 96813

November 5, 2010

### VIA ELECTRONIC AND REGULAR MAIL

The Honorable Carlito Caliboso  
Chairman  
State Public Utilities Commission  
465 South King Street, Room 103  
Honolulu, Hawai'i 96813

Mr. Dean Nishina  
Executive Director  
Division of Consumer Advocacy  
Dept. of Commerce & Consumer Affairs  
335 Merchant Street, Room 326  
Honolulu, Hawai'i 96813

Re: Application by Pasha Hawai'i Transport Lines LLC - Docket No. 2009-0059

To the State Public Utilities Commission and the State Consumer Advocate:

We have reviewed your Decision and Order, dated September 20, 2010, in the case mentioned above. Many members of the Legislature shared and voiced very serious concerns about this case, and continue to have serious questions about both its process and result.

Many of us have already pointed out to the Commission that, as members of the State's policymaking body, legislators must necessarily focus on issues involving the health of the State's economy. Those of us representing the Neighbor Islands are especially aware that the water cargo transportation industry plays a major role in sustaining our islands. This industry is pivotal in directly and indirectly shaping how Neighbor Island residents and businesses live and thrive.

More specifically, the economy of the Neighbor Islands depends heavily on universal, frequent and reliable barge service provided by Young Brothers. As such, we earlier respectfully requested that this Commission exercise extreme caution in reviewing any proposal that may change the economics of its existing comprehensive intra-state freight system upon which the Neighbor Islands so heavily rely.

Legislators also emphasized it is essential that you, as persons living and working on O'ahu (and entrusted to carry forth legislative policy in a case which so directly affects Neighbor Island residents), take the necessary measures to completely and truly understand the importance of Young Brothers' intra-state freight system and the health of this system to those who live and work on the Neighbor Islands. In particular, legislators called for both public hearings and an evidentiary hearing because residents had and have too much at stake for any lesser process.

Open government is the policy of this State. As you know, public hearings are an essential part of open, effective and accountable government. A public forum ensures not only that the public has an avenue to voice concerns, but also that government agencies are well-informed and made aware of, among other things, community concerns regarding risks of harm. It is particularly important that those individuals and communities who have much at stake and will potentially be impacted by agency decision-making have this opportunity to be heard. In cases where issues of public importance are heavily contested, evidentiary hearings are equally important. These hearings foster the development of a proper and complete record as a basis for good decision-making by, among other things, providing a forum for the testing of positions by the parties as well as the Commission.

We believe that the present case should have included, before any PUC decision, the safeguards of public and evidentiary hearings, as part of ensuring careful review and public confidence in the result. This critical case should not have been closed without the benefit of the best available process and this process should have included public participation so that concerns and impacts, widely stated by both legislators and their constituents, could have been discussed, argued and heard in the view and with the participation of the public.


Again, we call upon the Commission to reconsider the action taken and to hold public hearings on all islands in reconsidering this matter. We also call upon the Commission to employ all other available processes to ensure a well-developed record that reflects rigorous participation by all parties and the Commission and that includes the opportunity to question and test adverse witnesses and the opposing positions presented in this matter.

If you have any questions about this matter, please do not hesitate to contact us. Like our constituents, we also look forward to the opportunity to be publically heard.

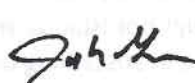
Sincerely,



Sen. Russell Kokubun



Sen. Dwight Takamine



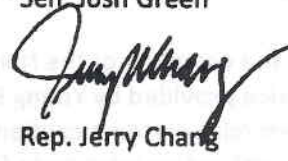
Sen. Josh Green



Rep. Clifton Tsuji



Rep. Robert Herkes



Rep. Jerry Chang



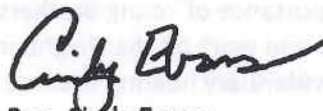
Rep. Denny Coffman



Rep. Faye Hanohano



Rep. Mark Nakashima



Rep. Cindy Evans





HAWAII STATE LEGISLATURE  
STATE CAPITOL  
HONOLULU, HAWAII 96813

November 18, 2010

The Honorable Carlito Caliboso  
Chairman  
State Public Utilities Commission  
465 South King Street, Room 103  
Honolulu, Hawai'i 96813

Mr. Dean Nishina  
Executive Director  
Division of Consumer Advocacy  
Dept. of Commerce & Consumer Affairs  
335 Merchant Street, Room 326  
Honolulu, Hawai'i 96813

Re: Application by Pasha Hawai'i Transport Lines LLC - Docket No. 2009-0059

Dear Chair Caliboso and Mr. Nishina:

The undersigned Kauai legislative delegation represent concerned businesses and residents on the island of Kauai.

We have reviewed the Decision and Order, dated September 20, 2010, by the Hawaii Public Utilities Commission (Commission) in the above referenced docket. We have also reviewed the letter, dated November 5, 2010, signed by the members of the Big Island legislative delegation and join with that delegation in requesting the Commission to take the following actions:

Again, we call upon the Commission to reconsider the action taken and to hold public hearings on all islands in reconsidering this matter. We also call upon the Commission to employ all other available processes to ensure a well-developed record that reflects rigorous participation by all parties and the Commission and that includes the opportunity to question and test adverse witnesses and the opposing positions presented in this matter.

The reconsideration of the Commission's previous action on this docket and re-opening of public hearings should take place before the commencement of any intrastate service by Pasha. The Commission, early in these proceedings, was well aware of the neighbor island's concerns of the inadvertent consequences of opening of limited competition in an exclusive service territory of the regulated water carrier. The Commission, without explanation to legislators, their constituents or the public in general, disregarded each of these requests for public and evidentiary hearings and failed to place the burden on the applicant to demonstrate a need for the service.

However, notwithstanding the above concerns, there should be no disagreement on the following three points.

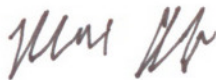
- (1) Intrastate cargo service is critical to the sustainability of neighbor islands communities.
- (2) The ultimate authority on the regulation of water carriers is within the purview of the Legislature. There has been no policy discussion or directive from the Legislature regarding the need to open competition in the intrastate water carrier market to better serve the public's interest nor that a regulated market is not in the public's interest.
- (3) In cases that implicate the continuation and/or viability of critical neighbor island water carrier service, it is critical to apply the legislative policy of open government. As stated by the Big Island delegation, open government includes public hearings as "an essential part of open, effective and accountable government" and, "[i]n cases where issues of public importance are heavily contested," it also includes evidentiary hearings.

Again, this Commission has not given due consideration to the State policy of the necessity for a regulated intrastate water carrier in this docket. Where legislators, business and trade associations, business owners, economists and the primary intrastate carrier itself have called out for public and evidentiary hearings and have raised pointed and detailed concerns that the proposed service may change the economics of intrastate water carrier transportation and ultimately the viability of the State's primary intrastate carrier, it is the Commission's obligation, again as stated by the Big Island delegation, to use "the safeguards of public and evidentiary hearings, as part of ensuring careful review and public confidence in the result" and to give the public "the benefit of the best available process ... so that concerns and impacts, widely stated by both legislators and their constituents, [may be] discussed, argued and heard in the view and with the participation of the public."

Furthermore, we hope that Commissioners themselves will engage in this public discussion and debate and issue questions to and test the positions of the parties, experts and other witnesses on the concerns and impacts so widely stated in written submissions.

If you have any questions about this matter, please do not hesitate to contact us. We, like so many concerned businesses and residents in this State, look forward to the opportunity to be publicly heard on this very important issue so that the best decision in the interest of Hawaii can be made.

Sincerely,



Ronald D. Kouchi  
State Senator, District 7



Hermina M. Morita  
State Representative, District 14



James Kunane Tokioka  
State Representative, District 15



Daynette Morikawa  
State Representative, District 16

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
PASHA HAWAII TRANSPORT LINES LLC )  
For Issuance of a Certificate of )  
Public Convenience and Necessity )  
and Approval of its Local Tariff )  
No. 1 for Service Between and )  
Among the Ports of Honolulu, )  
Kahului, Hilo and Nawiliwili )  
\_\_\_\_\_ )

DOCKET NO. 2009-0059

INTERIM DECISION AND ORDER

PUBLIC UTILITIES  
COMMISSION

2010 SEP 20 P 3:55

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
PASHA HAWAII TRANSPORT LINES LLC ) Docket No. 2009-0059  
For Issuance of a Certificate of )  
Public Convenience and Necessity )  
and Approval of its Local Tariff )  
No. 1 for Service Between and )  
Among the Ports of Honolulu, )  
Kahului, Hilo and Nawiliwili )  
\_\_\_\_\_ )

INTERIM DECISION AND ORDER

By this Interim Decision and Order, the commission approves, on an interim basis, Pasha Hawaii Transport Lines LLC's ("Pasha") application for a Certificate of Public Convenience and Necessity ("CPCN") to operate as a water carrier of property between and among the ports of Honolulu, Kahului, Hilo, Nawiliwili, Barbers Point, and Pearl Harbor.<sup>1</sup>

As described in greater detail herein, to provide the State with additional intrastate shipping options and to foster

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<sup>1</sup>See Application; PHTL Exhibits A - F; Verification; and Certificate of Service, filed on March 13, 2009 ("Application"). Pasha served copies of its Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), which is an ex officio party to this docket pursuant to Hawai'i Revised Statutes ("HRS") § 269-51 and Hawai'i Administrative Rules ("HAR") § 6-61-62. Pursuant to HAR § 6-61-82, Pasha also served copies of its Application on Mayor Mufi Hanneman, City and County of Honolulu, Mayor Charmaine Tavares, County of Maui, Mayor William P. Kenoi, County of Hawai'i, Mayor Bernard P. Carvalho, Jr., County of Kaua'i, and Director Brennon Morioka, State of Hawai'i ("State") Department of Transportation.

fair competition in the intrastate shipping industry, the commission will allow Pasha to operate on an interim basis through December 31, 2013, which will enable the commission to gather actual data and relevant information (as opposed to projections and estimates) from the parties to determine whether Pasha's intrastate operations will cause undue harm to the existing intrastate shipping industry or the public interest.

Having thoroughly reviewed all the evidence presented in this proceeding, the commission finds that: (1) Pasha is fit, willing, and able to perform the proposed service, and (2) the proposed service is required by the present and future public convenience and necessity. As further discussed in this Interim Decision and Order, the commission recognizes the value of encouraging competition and providing consumers with a choice of intrastate water carriers. The addition of a second water carrier of property would also minimize any potential harm or inconvenience to the public that would occur if existing services are disrupted.

Moreover, despite certain claims to the contrary, the commission finds that there is no specific, verifiable evidence in the record that Pasha's proposed service will detrimentally harm the public or other intrastate water carriers. Given Pasha's unique market positioning and limited scope of service, the commission believes that there will probably be no undue harm to the existing carrier. The commission, however, is fully cognizant of the concerns that the existing carrier's ability to

serve certain customers and neighbor island communities may be potentially affected by Pasha's entry into the market.

Because it is difficult to determine such issues based solely on theoretical projections submitted by the parties, the commission will allow Pasha to operate on an interim basis until December 31, 2013. During this interim period, the commission will monitor Pasha's operations and evaluate the impact caused by Pasha's proposed service, if any. The commission will then issue a final decision and order. The commission, however, reserves the right to terminate Pasha's interim authority to operate if, at any time, the commission determines that Pasha's intrastate service results in significant adverse effects on existing services or the public interest.

Accordingly, the commission approves, on an interim basis, Pasha's request to provide intrastate water carrier service, as described in its Application; subject to the regulatory conditions and requirements set forth in Section V of this Interim Decision and Order.

I.

A.

#### Relevant Procedural History

On March 13, 2009, Pasha filed an Application for the issuance of a CPCN to operate as a water carrier of property between and among the islands of O'ahu, Maui, Hawai'i, and Kaua'i, and for approval of its proposed Local Tariff No. 1 for such water carrier service. The Application was made pursuant to

HRS § 271G-10 and HAR § 6-61-81. As part of its proposed tariff, Pasha is also seeking commission approval to implement a Fuel Price Adjustment.<sup>2</sup>

On April 2, 2009, the Consumer Advocate filed its Preliminary Statement of Position ("SOP") stating that it lacked sufficient information to state its position on whether Pasha's Application should be approved and that it would be issuing information requests ("IRs") to aid in its review.

On April 7, 2009, pursuant to a Stipulation for Protective Order entered into between Pasha and the Consumer Advocate, the commission issued a Protective Order regarding all confidential information identified in the course of this proceeding and in connection with the Application ("Protective Order").

On April 27, 2009, Young Brothers, Limited ("YB") timely filed a Motion to Intervene in this proceeding ("Motion to Intervene").<sup>3</sup> On May 28, 2009, over Pasha's opposition<sup>4</sup>, the commission granted YB's Motion to Intervene and specifically allowed YB to intervene in this docket to assist the commission

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<sup>2</sup>See Exhibit D to the Application, at 23.

<sup>3</sup>YB is a Hawai'i corporation and an authorized common carrier by water under HRS Chapter 271G. See In re Young Brothers, Limited, Docket No. 3633, Decision and Order No. 5682, filed on June 1, 1979 (granting YB's application for a CPCN). It is currently authorized by the commission to transport property by barge between the islands of O'ahu, Hawai'i, Kaua'i, Maui, Moloka'i, and Lana'i. The intrastate shipment of goods under its regulated water carrier service is governed by its Local Freight Tariff No. 5-A.

<sup>4</sup>On May 4, 2009, Pasha filed its opposition to YB's Motion to Intervene.

in examining the state of the inter-island shipping market and the potential impacts of Pasha's proposed service overall.<sup>5</sup>

In accordance with the "rolling discovery" process specified in the Procedural Order,<sup>6</sup> the Consumer Advocate served Pasha with a first set of IRs on September 4, 2009, and a second set of IRs on September 18, 2009. In addition, the Consumer Advocate served YB with one set of IRs on September 25, 2009. Meanwhile, YB served Pasha with three sets of IR requests on September 4, 2009, September 25, 2009, and September 30, 2009.<sup>7</sup>

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<sup>5</sup>See Order Granting Intervention, filed on May 28, 2009, at 7. Pasha, the Consumer Advocate, and YB are hereinafter collectively referred to as the "Parties".

<sup>6</sup>On August 26, 2009, the commission approved YB's proposed procedural order with modifications ("Procedural Order").

<sup>7</sup>YB sought to obtain certain confidential financial information from Pasha and initially sought to amend the Protective Order. See YB's Motion to Clarify or Modify the Stipulation for Protective Order Filed on April 7, 2009 to Include Young Brothers, Limited as a "Qualified Person", filed on July 31, 2009 ("Motion to Clarify").

The commission denied YB's Motion to Clarify on September 15, 2009, and YB thereafter filed a motion for reconsideration. See YB's Motion to Reconsider or Clarify the Order Denying Young Brothers, Limited's Motion to Clarify or Modify the Stipulation for Protective Order Filed on April 7, 2009 to Include Young Brothers, Limited as a "Qualified Person", filed on September 28, 2009, ("Motion for Reconsideration"). The commission denied YB's Motion for Reconsideration on November 10, 2009. See Order Denying Young Brothers, Limited's Motion for Reconsideration and Dismissing as Moot Pasha Hawaii Transport Lines LLC's Motion for Leave to File Reply, filed on November 10, 2009 ("Order Denying YB's Motion for Reconsideration").

The commission, however, specifically noted that YB was not precluded from filing an appropriate motion to compel "to the extent that YB believes that certain types of information should not be designated as confidential and that it requires such information in order to be able to appropriately assist the commission in examining the state of the inter-island shipping



Pasha responded to YB's first set of IRs on September 18, 2009 and to the Consumer Advocate's first set of IR requests on September 21, 2009.<sup>8</sup>

On October 9, 2009, the Consumer Advocate and YB filed their SOPs in accordance with the Procedural Order. At the time the Consumer Advocate filed its Initial SOP, several discovery requests were still pending. Additional information from Pasha was subsequently received by the Consumer Advocate on October 12, 2009 (Pasha's responses to Consumer Advocate's second IR requests) and on October 13, 2009 (Pasha's responses to YB's second and third set of IRs). In addition, YB filed its response to the Consumer Advocate's first set of IRs on October 22, 2009, and supplemented its responses on December 11, 2009.<sup>9</sup>

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market and the potential impacts of Pasha's proposed service overall. . . ." Id. at 6.

YB subsequently filed a motion to compel. See YB's Motion to Compel Pasha Hawaii Transport Lines LLC to Provide Responses to Information Requests, filed on December 4, 2009 ("Motion to Compel"). On December 11, 2009, Pasha filed its opposition to YB's Motion to Compel. The commission denied YB's Motion to Compel on September 20, 2010.

<sup>8</sup>According to the Consumer Advocate, Pasha requested additional time to respond to the Consumer Advocate's first set of IRs. By stipulation between Pasha and the Consumer Advocate, Pasha served its responses on September 21, 2009, instead of the original due date of September 18, 2009 under the Procedural Order. See Consumer Advocate's Statement of Position, filed on October 9, 2009 ("the Consumer Advocate's Initial SOP"), at 3 n.1.

<sup>9</sup>By letter dated December 14, 2009, Pasha objected to YB's supplemental discovery responses as being untimely, and as a "de facto supplemental" SOP. The commission, however, notes that a party has a continuing duty to seasonably supplement its discovery responses and filings with the commission if the party learns that its response or statement is in some material respect

On November 17, 2009, the Consumer Advocate requested approval to file a Supplemental SOP, which none of the other Parties objected to,<sup>10</sup> and which the commission granted on December 4, 2009.

On November 23, 2009 Pasha filed its Reply SOP in accordance with the existing procedural schedule.<sup>11</sup> The Consumer Advocate then filed its Supplemental SOP on December 15, 2009 ("Supplemental SOP").<sup>12</sup>

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incomplete or incorrect, or if the response omits material information. See Hawai'i Rules of Civil Procedure, Rule 26(e); HAR § 6-61-1. Although some of the information contained in YB's supplemental filings addresses certain issues raised in Pasha's Reply Statement of Position ("Reply SOP") filed on November 23, 2009, YB contends that the supplemental information was intended to refine YB's projected results of operations reduced by revenue losses attributable to Pasha and to provide further information regarding the potential financial impacts of Pasha's proposed service. See Supplemental Response of Young Brothers, Limited to Information Requests of the Division of Consumer Advocacy, filed on December 11, 2009, at 3-4.

In order to develop a sound record in this proceeding, the commission finds it reasonable to allow the evidence to be considered in this instance. HAR § 6-61-43. The commission, however, reminds the Parties that, in the absence of good cause, last minute supplemental filings may be deemed by the commission to be an undue interference with its orderly procedures, and may be disregarded by the commission. See HRCF Rule 26 and Rule 12(t) of the Rules of the Circuit Courts; HAR § 6-61-1.

<sup>10</sup>See Letter from Pasha to the commission, dated and filed on November 19, 2009. See also Letter from YB to the commission, dated and filed on November 19, 2009.

<sup>11</sup>Pasha did not request a corresponding extension of time to file its Reply SOP following the submission of the Consumer Advocate's Supplemental SOP, or for permission to file a Supplemental Reply SOP to respond to any additional issues raised in the Consumer Advocate's Supplemental SOP. See Letter from Pasha to the commission, dated and filed on November 19, 2009.

<sup>12</sup>The Consumer Advocate's Supplemental SOP does not address any of the assertions made in Pasha's Reply SOP because the

B.

Description of Applicant and Proposed Service

Pasha is a California limited liability company, formed in December 1999. It is currently owned by The Pasha Group, a family-owned, privately held company, and Hawaii Ship Management, LLC (formerly Van Ommeren Shipping (USA) LLC).<sup>13</sup> Since March of 2005, Pasha has operated a roll-on/roll off ("RO/RO") car and truck liner service between San Diego, California and the islands of O'ahu, Maui, Hawai'i, and Kaua'i.<sup>14</sup>

Pasha operates the M/V Jean Anne<sup>15</sup> on a fortnightly service schedule (i.e., every 14 days) with a standard vessel rotation of San Diego/Honolulu/Kahului/Hilo/San Diego.<sup>16</sup> Vessel calls have also been made at Nawiliwili, Kaua'i, and

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Consumer Advocate believes that Pasha should have the "last word" as the applicant. See Consumer Advocate's Supplemental SOP, at 19-20. It also does not address any of the matters raised in YB's December 11, 2009 supplemental discovery responses because the information was filed "at an advanced stage in this proceeding, which did not leave much time to review YB's filing." Id. at 19.

<sup>13</sup>Application at 4, and 10-11.

<sup>14</sup>Id. at 2.

<sup>15</sup>"M/V" means "motor-driven vessel". According to Pasha, M/V Jean Anne is 579 feet long and 102 feet wide, with a cargo capacity of over 140,000 square feet. See Application at 9; and Exhibit A to Application. Some of its features include a completely enclosed cargo carrying space, a heavy duty aft ramp with a 100 metric ton capacity (which is being increased to 120 tons), and three adjustable decks which, when fully raised, extend to a height of over 16.7 feet. See Application at 3, 9 and Exhibit A to Application. The M/V Jean Anne was also outfitted with new fuel-processing equipment that allows her three diesel generators to burn marine diesel oil, a lighter and cleaner type of fuel. See Application at 9.

<sup>16</sup>Id. at 2.

Pearl Harbor and Barbers Point on O'ahu in response to a customer's request.<sup>17</sup>

Pasha is now seeking to expand its existing interstate operations to include intrastate water carrier service. As described in its Application, Pasha proposes to provide inter-island water transportation service for heavy commercial and military truck/trailer equipment, tracked vehicles, buses, automotive/recreational vehicles and other general cargoes, excluding passengers, livestock, and refrigerated cargoes.<sup>18</sup> Pasha plans to provide regular fortnightly intrastate service to Honolulu, Hilo, and Kahului.<sup>19</sup> Pasha also seeks commission authority to make calls at Nawiliwili, Barbers Point, and Pearl Harbor upon customer request.<sup>20</sup> Pasha does not intend to

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<sup>17</sup>Id. See also Pasha's Response to CA-IR-3(a).

<sup>18</sup>Application at 4. See also Pasha's Responses to CA-IR-3(a), CA-IR-14(d), and YB-IR-10(c).

<sup>19</sup>Application at 2-4, and Exhibit D to the Application, at 6. Because Pasha is proposing to offer inter-island service as part of its existing interstate service, calls at each of the ports in Honolulu, Hilo, and Kahului would be conducted approximately once every 14 days. See Pasha's Response to CA-IR-14(c); and Exhibit A to Application, at page 3.

<sup>20</sup>The Application does not clearly request commission approval to serve Pearl Harbor and Barbers Point, by customer request, and Pasha's proposed tariff does not include rates for service to Barbers Point and Pearl Harbor. See Application at 1, and Exhibit D to the Application, at 6. However, Pasha clarified in its discovery responses that, in addition to serving Honolulu, Hilo, and Kahului as part of its regular fortnightly schedule, and Nawiliwili by request, it is also seeking commission approval to make calls at Pearl Harbor and Barbers Point, upon customer request. See Pasha's Response to CA-IR-3(a).

serve the islands of Moloka'i and Lana'i since the harbor dimensions cannot accommodate the size of the M/V Jean Anne.<sup>21</sup>

Pasha states that its proposed service will be implemented without the need for any state or federal funding for incremental port facility equipment or improvements by the Department of Transportation, Harbors Division ("DOT").<sup>22</sup> Pasha also states that the existing harbor space currently available to Pasha at Honolulu, Kahului, Hilo, Nawiliwili, and Barbers Point is sufficient to accommodate its inter-island cargo.<sup>23</sup>

## II.

### A.

#### Consumer Advocate's Initial Statement of Position

Based on the Consumer Advocate's review of Pasha's Application, financial statements, and discovery responses, the Consumer Advocate concluded in its Initial SOP that Pasha is financially fit, willing and able to perform the proposed service. The Consumer Advocate found that Pasha not only has sufficient financial resources to sustain operations for its

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<sup>21</sup>According to Pasha, the Kaunakakai Harbor on Moloka'i has a water depth of 23 feet and is not sufficiently deep enough to accommodate the M/V Jean Anne. See Pasha's Response to CA-IR-3(c)(2). Furthermore, the Kaunakakai Harbor and the Kaunalapau Harbor on Lana'i do not have large enough berths to accommodate the M/V Jean Anne. See Pasha's Response to CA-IR-3(c)(2), and YB-IR-12.

<sup>22</sup>Application at 7.

<sup>23</sup>Id. at 6; and Pasha's Response to CA-IR-9(d). Pasha further represents that its proposed service does not require any type of environmental assessment or review. See Pasha's Response to CA-IR-11(a) and (b).

proposed service, it also has the necessary managerial and technical skills to successfully operate the proposed water carrier service based on Pasha's sixty-plus years of experience in the interstate shipping industry.<sup>24</sup> The Consumer Advocate further determined that, for the most part, Pasha has the necessary facilities to provide the proposed service.<sup>25</sup>

The Consumer Advocate, however, stated that it could not make "a supportable recommendation" regarding Pasha's Application due to the lack of sufficient information in the record regarding the issue of whether Pasha's proposed service is required by the present or future public convenience and necessity.<sup>26</sup> According to the Consumer Advocate, there were several outstanding discovery responses at the time it filed its Initial SOP. As a result of pending discovery, the Consumer Advocate expected that Pasha and YB would be submitting additional information to further develop the record. Among other things, the Consumer Advocate anticipated that YB would provide the necessary quantitative analysis to determine the potential impacts that Pasha's proposed service may have on YB's existing inter-island service.<sup>27</sup>

The Consumer Advocate indicated in its Initial SOP, that if no additional information was ultimately provided to

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<sup>24</sup>Consumer Advocate's Initial SOP at 6-8.

<sup>25</sup>Id. at 9-11.

<sup>26</sup>Id. at 1, and 28.

<sup>27</sup>Id. at 14.

support YB's claims regarding adverse effects on the public interest, then, with the exception of the proposed fuel price adjustment clause, it would not object to the approval of Pasha's Application, subject to certain conditions and modifications to Pasha's proposed rules and regulations.<sup>28</sup>

The Consumer Advocate's position was premised on the assumption that there would be minimal adverse impacts to the existing inter-island services offered by YB due to Pasha's limited scope of service and unique market positioning. The Consumer Advocate specifically noted, among other things, that Pasha's proposed service is limited to the use of only one vessel on a fortnightly sailing schedule; port visits are limited to Honolulu, Hilo, Kahului and only on inducement to Nawiliwili, Barbers Point and Pearl Harbor; Pasha's proposed rates are generally higher than the YB's current rates; and Pasha's proposed service will encompass fewer types of cargo and will not include livestock or refrigerated containers.<sup>29</sup>

Given Pasha's limited scope of service, the Consumer Advocate assumed that "[Pasha's] market for its proposed service will most likely be a limited number of [Pasha's] current interstate customers that would, for convenience purposes, desire to simultaneously utilize [Pasha's] intrastate water carrier service while the M/V Jean Anne is in port for their interstate

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<sup>28</sup>Id. at 28-29. The Consumer Advocate recommended that Pasha's proposed fuel price adjustment be denied due to the lack of any evidence in the record to justify the reasonableness of such an adjustment clause. Id. at 26-28.

<sup>29</sup>Id. at 14-17, 29.

cargo.”<sup>30</sup> Based on the foregoing, the Consumer Advocate indicated that Pasha’s proposed service would presumably not “garner or attract any significant share of Hawaii’s current or future intrastate water carrier market[,]” or have any “significant negative impact on YB’s intrastate water carrier business.”<sup>31</sup>

In regards to Pasha’s proposed rates, the Consumer Advocate stated that although there was limited information in the record to determine if the rates are reasonable, “an argument could be made to deem the proposed rates as acceptable” based in part on the following:

- (1) The instant filing is for a grant of a CPCN.
- (2) The rates are comparable or generally higher than the rates for YB, the present major intrastate water carrier.
- (3) Due to the expected limited market share of [Pasha’s] proposed service, the financial impact to any existing carrier in the intrastate market should be minimal.<sup>32</sup>

The Consumer Advocate, however, recommended that Pasha’s proposed Fuel Price Adjustment clause be denied based on the lack of evidence regarding the need or reasonableness of such a provision.<sup>33</sup> In addition, the Consumer Advocate contends that “any adjustment clause is akin to single-issue ratemaking[.]”<sup>34</sup>

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<sup>30</sup>Id. at 17.

<sup>31</sup>Id.

<sup>32</sup>Id. at 24 (internal citations omitted).

<sup>33</sup>Id. at 26-27.

<sup>34</sup>Id. at 27.



B.

YB's Statement of Position

YB argues that Pasha's Application should be denied by the commission because Pasha has not shown that its proposed service is required by the present or future public convenience and necessity as provided in HRS § 271G-10.<sup>35</sup> YB states that in order to establish the public convenience and necessity requirement, Pasha has the burden of proof to demonstrate "either a lack of adequate existing facilities to presently serve the public, or insufficient facilities to meet anticipated future demands for service."<sup>36</sup> According to YB, Pasha has failed to present any market studies, analysis, or other substantial evidence to show that existing facilities are inadequate or insufficient.<sup>37</sup>

As a regulated inter-island water carrier of property, YB currently offers twelve round-trip sailings from Honolulu each week, with four sailings weekly to Hawai'i (two each to Hilo and Kawaihae), three weekly sailings to Maui, two weekly sailings to Kaua'i, two weekly sailings to Moloka'i, and one weekly sailing to Lana'i.<sup>38</sup> YB claims that it has the capacity to meet all present and future cargo volume needs in the State, and that it has and continues to offer regular, frequent, affordable,

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<sup>35</sup>YB's SOP at 3, and 7-10.

<sup>36</sup>Id. at 8.

<sup>37</sup>Id. at 9-10.

<sup>38</sup>Id. at 14.

reliable, and comprehensive service for shippers of all types of freight to all islands.<sup>39</sup> In fact, YB states that it has increased its capacity by investing approximately \$62 million to upgrade its barge fleet with four new larger flat deck barges.<sup>40</sup> With the addition of larger vessels to its barge fleet, YB contends that it has sufficient capacity to meet demand beyond 2015.<sup>41</sup>

Moreover, based on growth estimates presented in Dockets No. 2008-0266 and 01-0255, YB anticipates limited growth in demand for intrastate shipping services for 2010 and 2011.<sup>42</sup>

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<sup>39</sup>Id. at 2, 13-20. The types of cargo transported by YB as part of its inter-island service include mixed, palletized, and containerized cargo, automobiles, RO/RO cargo, less than container load ("LCL") cargo, agricultural products, livestock, and refrigerated cargo. Id. at 15-16, 20. See also In re Young Brothers, Limited, Docket No. 2008-0266, Decision and Order, filed July 28, 2009, at 3. In addition, YB offers a 30% discount for non-containerized island agricultural products, a 35% discount for containerized island agricultural products, and discounted shipping rates for other products used by farmers, such as feed, fertilizer, and fiberboard. YB's SOP at 16.

<sup>40</sup>Id. at 14, 19-20.

<sup>41</sup>YB projects an intrastate freight volume of 145,940.5 container/platform equivalent ("CPE") in 2011 and 164,254 CPE in 2015, which is less than its 2006 volume (168,275 CPE) and 2007 volume (164,862 CPE). Id. at 19 n.20, and 23. YB's 2015 CPE volume is based on growth estimates used in In re Young Brothers, Limited, Docket No. 01-0255, Exhibits A and B to Statement of Young Brothers, Limited Pursuant to Order Initiating the Re-Examination of the Zone of Reasonableness Program filed on July 28, 2009, Part II.

<sup>42</sup>See YB's SOP at 23. See also In re Young Brothers, Limited, Docket No. 2008-0266, Stipulation of Young Brothers, Limited and the Division of Consumer Advocacy on Settlement of all Issues in this Proceeding, filed on May 29, 2009, Exhibit D (Dr. Bryon Gangnes' Supplement to April 2009 Update with Three Year Forecast for Young Brothers Rate Case) ("Dr. Gangnes' May 4, 2009 Supplemental Report").

While YB's expert projected a moderate increase in demand of 3.7% for 2010 and 6.0% for 2011, YB states that even with such increases, its projected volume for 2011 will still be significantly below its 2006 and 2007 volumes due to an overall decline in the market.<sup>43</sup>

As further evidence of the purported downturn in Hawai'i's intrastate shipping market, YB claims that for the period of 2005 to 2008, its actual **rate** of return from its intrastate operations was substantially less than its authorized rate of return:<sup>44</sup>

<u>Year</u>	<u>Authorized Rate of Return</u>	<u>Actual Rate of Return</u>
2005	11.06%	5.5%
2006	11.06%	1.6%
2007	10.76%	6.96%
2008	10.76%	2.99%

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<sup>43</sup>See YB's SOP at 23. Although YB's economist, Dr. Gangnes, projected a 3.7% and 6.0% growth for 2010 and 2011, respectively, he also projected an 11% decline in YB's intrastate CPE for 2009 (as compared to YB's 2008 intrastate CPE levels). As a result, Dr. Gangnes estimated an overall 6.9% decline in YB's average intrastate shipping volume for 2009-2011. See Dr. Gangnes' May 4, 2009 Supplemental Report, at 3-4.

In Docket No. 2008-0266, YB and the Consumer Advocate stipulated to the use of these overall economic projections to forecast YB's revenues in YB's 2009 test year rate case. See In re Young Brothers, Limited, Docket No. 2008-0266, Decision and Order, filed July 28, 2009, at 25-27.

"YB's SOP at 23. YB indicates that its consolidated rate of return base for the eight-month period ending on August 31, 2009 is 2.41%. Id. at 24. Although YB did not have comparable information regarding the rate of return for its intrastate operations at the time it filed its SOP, YB contends that its consolidated rate of return "is a clear indication that YB will not earn its authorized rate of return on its intra-state operations." Id. at 24 n.27.

YB argues that given the current state of Hawai'i's economy and the stagnant intrastate shipping market, Pasha will essentially take away business from YB and deprive YB from earning a reasonable return on its capital investments.<sup>45</sup>

YB also contends that there is no evidence that Hawai'i's intrastate shipping market can support two water carriers of property.<sup>46</sup> YB argues that "[b]ecause the inter-island shipping market is relatively small and the minimum efficient scale of shipping firms is quite large due to the presence of substantial economies of scale in providing different types of shipping services, Hawai'i's inter-island shipping market is clearly not a perfectly competitive market."<sup>47</sup> Instead, YB characterizes Hawai'i's market as a "natural monopoly" where intrastate shipping services can be supplied at a lower cost by one firm.<sup>48</sup>

Rather than fostering competition and more efficient inter-island water transportation service, YB claims that Pasha's entry into the market will be detrimental to customers and the general public at large. Because Pasha is proposing to offer services for only certain routes and lines of cargo that are generally more profitable (e.g. RO/RO service to Kahului and Hilo), YB contends that Pasha's "cream-skimming" or

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<sup>45</sup>Id. at 25.

<sup>46</sup>Id. at 21-22, and 29.

<sup>47</sup>Id. at 38-39.

<sup>48</sup>Id. at 39.

"cherry-picking" will reduce YB's stream of revenue by an estimated \$1,484,231 and will force YB to adjust its operations in order to earn a reasonable rate of return.<sup>49</sup>

For example, YB suggests that it may potentially have to reduce its subsidies and/or the frequency of service on high cost routes such as Moloka'i and Lana'i.<sup>50</sup> YB could also seek to reduce or eliminate its "Island Product" discount for local agricultural products, or petition the commission for an increase in its rates.<sup>51</sup> Each of these options would negatively impact YB's customers (via less frequent services and/or higher rates) and the general public (via increased cost of goods being shipped within the state).<sup>52</sup> In light of such potential adverse impacts, YB argues that Pasha's proposed service is contrary to the public interest.

C.

Consumer Advocate's Supplemental Statement of Position

After filing its Initial SOP, the Consumer Advocate received additional information from YB regarding the estimated financial impact of Pasha's proposed service on YB's intrastate operations. Among other things, YB provided a projected revenue

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<sup>49</sup>Id. at 43. See also Affidavit of Wayne M. Matsubara Attesting to Projected Revenue Loss Calculations of Young Brothers, Limited, in Support of Young Brothers, Limited's Statement of Position, attached as Exhibit K to YB's SOP.

<sup>50</sup>YB's SOP at 43, 45, and 47.

<sup>51</sup>Id. at 46-47.

<sup>52</sup>Id. at 43-47.

loss (using a 2009 test year and 2008 actual cargo volume), as well as an estimate of the total subsidy for the Moloka'i and Lana'i routes (using a 2009 test year).<sup>53</sup> The estimates provided by YB were based on certain assumptions because it was unable to obtain any financial information from Pasha regarding its proposed service.

For example, YB assumed that Pasha would have 26 sailings per year to Hilo and Kahului based on its proposed fortnightly sailing schedule and 12 sailings per year to Nawiliwili upon inducement.<sup>54</sup> YB also assumed that Pasha would carry 50% of YB's annual automobile volume and 50% of YB's annual RO/RO cargo to Hilo and Kahului, and 23% of YB's annual automobile volume and 10% of YB's annual RO/RO cargo to Nawiliwili.<sup>55</sup>

However, the Consumer Advocate noted in its Supplemental SOP that some of these assumptions may or may not be reasonable for the purposes of estimating the negative impact of

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<sup>53</sup>Consumer Advocates' Supplemental SOP, at 8, 10-11 (citing YB's Response to CA/YB-IR-1a and CA/YB-IR-2). Supporting information related to YB's estimated revenue loss due to Pasha's proposed service was filed by YB under seal pursuant to the Protective Order issued in this proceeding, as well as the Protective Order issued on January 6, 2009 in Docket No. 2008-0266, YB's last general rate case.

<sup>54</sup>Consumer Advocate's Supplemental SOP, at 9-10.

<sup>55</sup>Id. YB also based its calculations on a -6.9% growth estimate and a 9.22% approved rate increase for automobiles and RO/RO cargo. Id.

Pasha's proposed service.<sup>56</sup> Certain assumptions, such as the amount of automobile and RO/RO cargo that Pasha could potentially divert from YB, appear to be unreasonable and unsubstantiated, given Pasha's limited sailings and proposed higher rates.<sup>57</sup> Based on the evidence presented in this record, the Consumer Advocate contends that it has no factual basis to accept or refute YB's estimates, or to evaluate Pasha's assertions in its Application:

[A]ny potential effects on Hawaii and its consumers must be identified and resolved with some certainty and should not be subject to gross assumptions. Without any market study on the current and future Hawaii water carrier market, and more clear and comprehensive projected operational, sales and financial information from [Pasha] on its proposed service, there is no basis upon which to judge YB's above described financial estimates or to determine whether [Pasha's] entry into the Hawaii water carrier market might have an inconsequential or significant impact.<sup>58</sup>

Without substantive information to properly analyze the potential impact of Pasha's proposed service, the Consumer Advocate argues that approval of Pasha's Application is "too great a 'risk' given the potential or possible negative impact to YB and the likely undesired resultant effects this negative impact may have on the subsidy for its Molokai and Lanai

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<sup>56</sup>Id. at 11. The Consumer Advocate also raised concerns regarding YB's estimates of its subsidies and whether such estimates are based on normalized data. Id. at 12-13. As noted by the Consumer Advocate, however, YB's analysis regarding its cross-class subsidies and the reliability of its estimates "is an issue that should be resolved, but not necessarily in the instant proceeding." Id. at 12 n.18.

<sup>57</sup>Id. at 9-10.

<sup>58</sup>Id. at 15.

shipping routes.”<sup>59</sup> The Consumer Advocate further contends that “while letters from certain customers indicate interest, it is not clear that the proposed service will be required by the present or future public convenience and necessity without adversely affecting certain customer classes.”<sup>60</sup> The Consumer Advocate concludes that while Pasha “may appear to be fit, willing and able to properly perform the proposed service, [Pasha] has not met its burden of proof in regards to the related public interest and public convenience and necessity issues.”<sup>61</sup>

Based on these reasons, the Consumer Advocate recommends that the commission deny Pasha’s Application and offer Pasha “an opportunity to file a more fully supported application in a subsequent filing.”<sup>62</sup>

D.

Pasha’s Reply Statement of Position

In its Reply SOP, Pasha urges the commission to grant its Application for a CPCN and approve its Local Tariff No. 1. Pasha claims that not only is it fit, willing, and able to properly perform the proposed service, it has also presented “strong evidence” of both the present and future need for its

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<sup>59</sup>Id. at 14.

<sup>60</sup>Id. at 22.

<sup>61</sup>Id.

<sup>62</sup>Id.



proposed service as an inter-island water carrier.<sup>63</sup> Pasha specifically cites to the report of its economist, Dr. Leroy Laney, as evidence that Pasha's entry into Hawai'i's market will fulfill a present and future need for inter-island water transportation service:

[Pasha] has been encouraged to enter the intra-island market by car dealers, car rental companies, construction companies, equipment rental companies (including providers of construction equipment); the military, and others. Letters of support have also been received from the Governor of the State of Hawaii, the Speaker of the House of Representatives and other members of the legislature. The Harbors Division of the State Department of Transportation has provided a letter stating that Pasha is a business in good standing with them and is an exemplary tenant.<sup>64</sup>

Furthermore, Pasha asserts that Hawai'i's inter-island shipping market is not a "natural monopoly." While Hawai'i's economy may be small, Pasha argues that "the State of Hawaii does allow competition in several other industries which could conceivably lay claim to that of a natural monopoly."<sup>65</sup> In particular, Pasha cites the interstate shipping industry, inter-island air service, and telecommunications as several

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<sup>63</sup>Pasha's Reply SOP, at 7-8.

<sup>64</sup>Id. See also "Comments on the Proposed Entry of Pasha Hawaii Transport Lines LLC into the Hawaii Intrastate Water Carrier Market," by Dr. Leroy Laney, Ph.D., dated November 16, 2009 ("Dr. Laney's Report"), which was attached as Exhibit 2 to Pasha's Supplement to its First Response to Young Brother's Limited's Information Requests to Pasha Hawaii Transport Lines LLC, filed on November 23, 2009.

<sup>65</sup>Pasha's Reply SOP, at 10.

examples.<sup>66</sup> Given the characteristics of these other markets in which competition is allowed, Pasha contends that YB does not qualify as a natural monopoly.<sup>67</sup>

Pasha also suggests that in granting YB's CPCN in 1979, the commission did not confer an exclusive right to provide water transportation between the islands of Hawai'i.<sup>68</sup> In this regard, Pasha states that YB should not be allowed to "maintain its chokehold monopoly on the intra-island water transportation service that it has clung to for so many years."<sup>69</sup>

By offering an alternative choice, Pasha claims that it will bring "both competition and a unique service to intra-island water transportation that does not exist today."<sup>70</sup> Such competition, according to Pasha, will produce benefits for consumers and businesses, including improved customer service, better rates, and fewer disruptions in service, as well as the possibility of additional jobs.<sup>71</sup>

Contrary to YB's assertions, Pasha contends that it will not have a material adverse effect on YB's business. Extrapolating from YB's own estimates, Pasha calculates that YB will only lose \$147,978 of its estimated earnings after tax,

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<sup>66</sup>Id. at 11.

<sup>67</sup>Id.

<sup>68</sup>Id.

<sup>69</sup>Id.

<sup>70</sup>Id. at 4.

<sup>71</sup>Id. at 4, and 8-9.

which is less than 2% of YB's total estimated earnings after tax.<sup>72</sup> Thus, according to Pasha, the "bottom line dollar impact" to YB is "outweighed by the benefits of competition . . . and of allowing Hawaii businesses and consumers the ability to choose the *Jean Anne's* enclosed ro-ro service should they wish."<sup>73</sup>

### III.

#### Issues

As set forth in the Procedural Order, the issues in this proceeding are:

- (1) Whether Pasha is fit, willing and able to properly perform the proposed service and to conform to the provisions of the Hawai'i Water Carrier Law, HRS Chapter 271G, and the requirements, rules, regulations and decisions of the commission thereunder; and
- (2) Whether Pasha's proposed service is or will be required by the present or future public convenience and necessity.

### IV.

#### Discussion

##### A.

#### CPCN Determination

The Hawai'i Water Carrier Act ("HWCA"), Chapter 271G, HRS, governs intrastate water carrier services in the State. HRS § 271G-2, which sets forth the policy of the HWCA, states:

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<sup>72</sup>Id. at 13-14.

<sup>73</sup>Id.

**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.

Applicants seeking to operate as a water carrier must meet certain requirements in order to obtain a CPCN from the commission. Specifically, HRS § 271G-10(c) states:

A certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to [chapter 271G, HRS] and the requirements, rules and regulations of the commission thereunder, and that the proposed service, to the extent to be authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise the application shall be denied.<sup>74</sup>

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<sup>74</sup>Similarly, HRS § 269-7.5(c) provides:

A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and

In addition, HAR § 6-61-81 requires all applications for a water carrier CPCN to include, among other things, "[f]acts showing that the proposed service will be required by the present and future convenience and necessity and is in compliance with the policy declared in section 271G-2, HRS."<sup>75</sup> Therefore, before granting an applicant's request for a CPCN to operate as a common carrier by water, the commission must determine that (1) the applicant is fit, willing and able to perform the proposed service, (2) the proposed service is or will be required by the present or future public convenience and necessity, and (3) the proposed service is consistent with the public interest policies set forth in HRS § 271G-2.

1.

Fitness Requirement

Under HRS § 271G-10(c), the applicant must present substantial evidence that it is fit, willing and able to perform the proposed service. The finding of fitness to perform the

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to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied. Any certificate issued shall specify the service to be rendered and there shall be attached to the exercise of the privileges granted by the certificate at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as a public convenience and necessity may require.

<sup>75</sup>HAR § 6-61-81(8).

proposed service has two components: (1) a determination of the applicant's fitness to operate under the certificate, including a review of its previous service, and (2) its financial fitness.<sup>76</sup>

In this case, the commission finds that Pasha has the operational and financial ability to provide the proposed service. According to the information in the record, Pasha has been providing interstate service between San Diego and Hawai'i for the past five years. Since she began sailing in March 2005, the M/V Jean Anne has made more than 100 round-trip voyages under the command of Captains Greg Johnson and Steve Bond.<sup>77</sup> In addition, Pasha's managerial team appears to have extensive experience in ocean transportation, maritime operations, and corporate management.<sup>78</sup>

Pasha also indicates in its Application that it has retained Interocean American Shipping, a professional crewing company, to hire the M/V Jean Anne's Master, officers, and crew and that it intends to continue hiring longshore labor from the International Longshore and Harbor Workers Union to load and

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<sup>76</sup>In re Charley's Tour and Transportation, Inc., 55 Haw. 463, 473, 522 P.2d 1272, 1278 (Sup. Ct. 1974) ("Charley's Tour"). The Hawai'i Supreme Court in Charley's Tour interpreted the statutory requirements for obtaining a CPCN under the Hawai'i Motor Carrier Law, Chapter 271, HRS. Because the statutory language of HRS § 271-12 is essentially identical to that in HRS § 271G-10, the commission finds the Court's analysis in Charley's Tour to be persuasive.

<sup>77</sup>Application at 6, 8.

<sup>78</sup>Id. at 4-5, 8, and Exhibit C to the Application.

unload cargo.<sup>79</sup> Because Pasha is already offering interstate services, the commission presumes that Pasha will use the same crew for its intrastate operations and hire additional crew as needed. Therefore, based on the foregoing, the commission finds that Pasha has the appropriate managerial and technical support to successfully provide the proposed intrastate service.

Second, the commission finds that Pasha has sufficient financial resources to sustain operations for the proposed service. As part of its submissions to the commission, Pasha provided audited financial statements for years ended December 31, 2006 and 2005, years ended December 31, 2007 and 2006, and for years ended December 31, 2008 and 2007.<sup>80</sup>

Pasha also represents in its Application that it applied for and obtained Title XI funding from the Maritime Administration of the United States Department of Transportation ("MARAD") to finance the construction of the M/V Jean Anne.<sup>81</sup> According to Pasha, its interstate service was approved by MARAD as being economically viable following an extensive review by

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<sup>79</sup>Application at 8.

<sup>80</sup>See Exhibit F attached to Application (filed under seal). See also Exhibit 1 to Pasha's Response to CA-IR-1(c) (filed under seal).

<sup>81</sup>See Application at 11. To qualify for assistance under the Title XI Federal Ship Financing Program, the ship owner or shipyard must have sufficient operating experience and the ability to operate the vessel on an economically sound basis. See 46 U.S.C.A. § 53708. As part of the review process, MARAD determines whether the applicant meets certain financial requirements with respect to working capital and net worth and is financially sound.

MARAD's economic experts.<sup>82</sup> Because Pasha contends that "[t]he proposed inter-island service will only have the incremental direct cost of labor associated with the inter-island cargoes shipped and incremental operational costs[,]” Pasha's proposal to expand its operations to include inter-island service appears to be economically sound.<sup>83</sup>

Third, the commission finds that Pasha has the necessary facilities and equipment to provide the proposed service. Pasha represents that its proposed service does not require any type of environmental assessment or review, as Pasha will be utilizing existing harbor facilities under the jurisdiction of the DOT.<sup>84</sup> Pasha also indicates that existing harbor space currently available to Pasha at Honolulu, Kahului, Hilo, Nawiliwili, and Barbers Point is sufficient to accommodate Pasha's inter-island cargo.<sup>85</sup>

Therefore, based on the foregoing, the commission concludes that Pasha is fit, willing, and able to properly perform the proposed service, and is able to conform to HRS Chapter 271G and the requirements and rules of the commission.

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<sup>82</sup>Application at 11.

<sup>83</sup>Id.

<sup>84</sup>Id. at 7; and Pasha's Response to CA-IR-11(a) and (b).

<sup>85</sup>Application at 6; and Pasha's Response to CA-IR-9(d).



Public Convenience and Necessity Requirement

Having determined that Pasha satisfies the fitness requirement, the commission will now address the second criteria for obtaining a CPCN under HRS § 271G-10: the public convenience and necessity requirement. In this proceeding, the Parties disagree as to whether or not Pasha's proposed service is or will be required by the present or future public convenience and necessity, and whether the proposed service is in the public interest. Pasha claims that it has presented ample evidence of both the present and future need for its proposed service as an inter-island water carrier.<sup>86</sup> On the other hand, the Consumer Advocate and YB argue that Pasha has not met its burden of proof on showing that its proposed service is required by the present or future public convenience and necessity, and is consistent with the public interest.<sup>87</sup>

The HWCA does not explicitly define the term "public convenience and necessity". Hawai'i appellate courts, however, have previously interpreted the term within the context of the HRS Chapter 271, the Hawai'i Motor Carrier Law. In Charley's Tour, the Court stated:

While it is well settled that the Commission should consider the public interest in maintaining the health and stability of existing carriers and the adequacy of existing services, these are but

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<sup>86</sup>Pasha's Reply SOP, at 7-8.

<sup>87</sup>Consumer Advocate's Supplemental SOP, at 22; YB's SOP, at 3, 8-10, and 31-37.

two of the elements to be considered in determining public convenience and necessity. . . .

The burden is on the applicant to show that the proposed operation not only will be of beneficial value to the community, but also is a necessity. Generally, the applicant may meet this burden by demonstrating either a lack of adequate existing facilities to presently serve the public, or insufficient facilities to meet anticipated future demands for service.

55 Haw. at 469, 522 P.2d at 1277 (internal citations omitted).

Relying upon the Court's holding in Charley's Tour, YB contends that Pasha cannot satisfy the public convenience and necessity requirement because there is no substantial evidence that: (1) existing inter-island water transportation services are inadequate, or (2) YB is unable to meet an anticipated increase in demand. In essence, YB argues that because it "has met and continues to meet the present and future public convenience and necessity in the State of Hawaii[.]" Pasha cannot satisfy the public convenience and necessity requirement under HRS § 271G-10(c).<sup>88</sup>

Evidence regarding the adequacy of existing services, however, is only one of the factors to be considered in determining public convenience and necessity. Charley's Tour, 55 Haw. at 469, 522 P.2d at 1277. While evidence regarding the lack of adequate existing facilities or insufficient facilities to meet future demands for service may be used to show public convenience and necessity, the Court in Charley's Tour also stated that the commission "may authorize the certificate even

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<sup>88</sup>YB's SOP at 8-10, 13-20.

though other existing carriers might be fit, willing, and able to furnish successfully the proposed service." Id. The Intermediate Court of Appeals in In re Akina Bus Service, Ltd., 9 Haw. App. 240, 246, 833 P.2d 93, 97 (1992) further clarified that "[t]he adequacy of existing services is not the touchstone of need; it is but one of the elements to be considered in determining public convenience and necessity." Therefore, the adequacy of existing services is not necessarily determinative.

In exercising its duty under the HWCA, the commission must consider numerous factors, including the promotion of "safe, adequate, economical, and efficient service among carriers," "reasonable rates and charges for transportation . . . without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices," and a "sound transportation system by water." HRS § 271G-2. **The policy of the HWCA, as articulated by the state legislature in Section 271G-2, HRS, is one of fair, regulated competition, rather than governmentally protected monopoly.** Therefore, in addition to considering the adequacy of existing services, the commission must also weigh the possible public benefits that may result from increased competition.

The commission recognizes that the entry of a second water carrier of property may be of beneficial value to the community. **Competition among firms, or the potential of such competition, can benefit the public by creating pressure for the existing firms to minimize their costs and lower their prices, improve the quality of their existing products, develop new**

technology, and increase service offerings. See In re Robert's Tours & Transp., Inc., 104 Hawai'i 98, 109, 85 P.3d 623, 634 (Sup. Ct. 2004) (affirming the commission's decision to grant a motor carrier CPCN where "it would encourage competition and constrain otherwise monopolistic operations"). In this regard, fostering competition serves a valid regulatory purpose.

Moreover, the Hawai'i Supreme Court has stated that "there is no right *per se* to be protected from new entrants into the shipping business." In re Gray Line Hawai'i, Ltd., 93 Hawai'i 45, 58, 995 P.2d 776, 789 (Sup. Ct. 2000) (citations omitted) (affirming the transfer of a motor carrier CPCN). While the commission must consider the impact that increased competition may have on a particular market, the fact that additional competition may divert revenues from existing carriers is not a valid ground by itself for denying a request for a CPCN. Big K Corporation v. Public Service Commission of Utah, 689 P.2d 1349, 1355 (Utah Sup. Ct. 1984). Even if the grant of a CPCN produces some adverse impact on incumbent carriers, such potential loss may be outweighed by the potential benefits to the public.

Having thoroughly reviewed the entire record in this proceeding, the commission finds that Pasha's proposed service is or will be required by the present and future public convenience and necessity. As noted by the Consumer Advocate, Pasha's proposed service offers the public a choice of intrastate water carrier service and encourages competition among carriers. This,

in turn, could result in higher quality customer service, improved service offerings, and possibly more jobs.<sup>89</sup>

More importantly, allowing Pasha to operate would provide the State with an alternative option in the event YB's service is disrupted or an emergency situation that requires the availability of a second water carrier of property should occur. As noted by the Consumer Advocate, the options for shipping cargo inter-island are basically limited to the airline industry, YB, and freight forwarders (which in turn rely on the airlines and YB).<sup>90</sup> For customers shipping certain types of cargo, however, YB's barge service is the only option that is currently available. Given the critical importance of the inter-island shipping industry in the movement of produce, livestock, and consumer goods within the State, the commission believes that the continued reliance on only one intrastate water carrier of property places the State in an untenable position.

Although YB contends that it is fully capable of meeting the present and future demands for inter-island water transportation service, "[a] service is not necessarily adequate because [a] community can 'get by,' can conduct its business without further or additional service." Big K Corporation, 689 P.2d at 1355 (quoting Mulcahy v. Public Service Commission, 117 P.2d 298, 301 (Utah Sup. Ct. 1941)). An existing service may be inadequate if the proposed service offers improvements or better

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<sup>89</sup>Consumer Advocate's Initial SOP at 17-18.

<sup>90</sup>Id. at 18.

service than existing carriers. Big K Corporation, 689 P.2d at 1355 (citation omitted).

In this case, Pasha's proposed service will provide customers with RO/RO water transportation service. In addition, Pasha claims that the "M/V Jean Anne will offer capacity not currently available by providing a vessel with adjustable, fully enclosed cargo decks, a stern ramp capable of receiving loads up to 100 metric tons, and increased capacity for oversize cargos."<sup>91</sup> While Pasha's sailing schedule may be less frequent, its proposed service would benefit shippers who need to transport oversized cargos, such as heavy construction equipment, tracked vehicles, buses, and automotive/recreational vehicles, in a fully enclosed cargo space.

Furthermore, based on the information presented in this docket, there is no verifiable evidence that the addition of Pasha will be detrimental to the public or to other intrastate water carriers of property. The only evidence that is currently in the record regarding the potential financial impacts of Pasha's entry on YB's services is based exclusively on YB's projections and estimates. As noted by the Consumer Advocate, however, YB's projections and estimates regarding the financial impact of Pasha's proposed service on YB's intrastate operations are largely based on certain assumptions that may not be reasonable. Since Pasha is offering more limited service on a less frequent sailing schedule, and the fact that Pasha's

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<sup>91</sup>Application at 10.

proposed rates are generally higher than YB's rates, YB's estimates may be somewhat speculative.

The commission also notes that although YB's economist, Dr. Gangnes, estimated an overall 6.9% decline in YB's average intrastate shipping volume for 2009-2011, he projected a moderate increase in demand of 3.7% for 2010 and 6.0% for 2011.<sup>92</sup> Such information suggests a less bleak outlook than what has been presented by YB in this proceeding.

Therefore, based on all of the evidence presented by the Parties, the commission believes that there is likely to be no undue harm to existing services, particularly given Pasha's limited scope of service. The commission also recognizes, however, the concerns raised by YB, the Consumer Advocate, as well as members of the public, regarding the potential negative impacts on certain YB customers and neighbor island communities.

Because such concerns are difficult to determine based on projections and estimates submitted by the parties, the commission concludes that the most reasonable solution is to allow Pasha to provide its proposed service on an interim basis, until December 31, 2013.<sup>93</sup> This will enable Pasha to provide the commission and the Consumer Advocate with actual intrastate revenue, cargo volume, and cost support data, which can then be

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<sup>92</sup>See Dr. Gangnes' May 4, 2009 Supplemental Report, at 3-4.

<sup>93</sup>The interim operational period will last approximately 40 months.

used to determine whether YB's claims of adverse impact are in fact true.

During the interim operational period, Pasha shall submit monthly and annual financial and statistical reports, as required by HAR §§ 6-65-56(a)(1) and (a)(2), and cost of service information (including information regarding the allocation of costs between Pasha's interstate and intrastate services) on an annual basis. In addition, at the end of Pasha's second full calendar year of intrastate operations, Pasha shall submit a summary of its actual revenues, expenses, cargo volume/tonnage statistics, and an updated economic analysis of the current and future state of Hawai'i's market, including economic forecasts of the demand for inter-island shipping services through 2017 (collectively referred to as the "Second Year Reports").<sup>94</sup>

The Consumer Advocate will be allowed to submit further comments, expert testimony, and documentary evidence in response to Pasha's Second Year Reports. YB will also be permitted to submit additional evidence in support of its claims of adverse impact.<sup>95</sup> The commission will then consider the additional

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<sup>94</sup>The Second Year Reports shall essentially be in the same form as the annual financial and statistical reports that are required by HAR § 6-65-56, with an additional attachment for Pasha's updated economic forecast. The Second Year Reports, will cover Pasha's initial date of operations through December 31, 2012.

<sup>95</sup>YB shall bear the burden of producing evidence to support its claim of adverse impacts. As the Applicant, however, Pasha retains the ultimate burden of proving that its proposed service is or will be required by the present or future public convenience and necessity, and is consistent with the public



evidence and issue a final decision and order thereafter. The commission, however, reserves the right to revoke Pasha's interim authority to operate if, at any time, the commission determines that Pasha's intrastate service results in significant adverse effects on YB's existing services and/or the public interest.

Accordingly, the commission approves, on an interim basis, Pasha's request to operate as an intrastate water carrier of property, as described in its Application; provided that Pasha adheres to the regulatory conditions and requirements set forth in Section V of this Interim Decision and Order.

B.

Pasha's Proposed Rules, Regulations and Rates

HRS § 271G-16, which governs the rates, fares and charges of common carriers by water, provides in relevant part:

(b) It shall be the duty of every water carrier of property to provide safe and adequate service, equipment, and facilities for the transportation of property and to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property.

(c) All 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

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interest policies set forth in HRS § 271G-2. Charley's Tour, 55 Haw. at 469, 522 P.2d at 1277.

unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. . . .

Based on the evidence in the record, the commission finds that, with the exception of the Fuel Price Adjustment, Pasha's proposed rates are just and reasonable.<sup>96</sup> Since the instant filing is for a grant of a CPCN, the commission recognizes that a traditional review of Pasha's proposed rates is difficult and impractical at this time due to the limited historical data related to Pasha's proposed intrastate operations. Therefore, the commission will approve Pasha's proposed rates at this juncture and will reserve its right to review the reasonableness of Pasha's rates in its next rate case proceeding. At such time, Pasha will be required to present detailed financial information in order for the commission and the Consumer Advocate to fully evaluate the reasonableness and impact of any proposed rate change.<sup>97</sup>

Furthermore, the commission approves as just and reasonable Pasha's proposed rules and regulations, subject to the recommended changes proposed by the Consumer Advocate, and consistent with Section V of this Interim Decision and Order.<sup>98</sup>

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<sup>96</sup>See discussion *infra* Section IV.C.

<sup>97</sup>Such financial information would include, among other things, Pasha's historical and forecasted revenues, a cost of service study that includes the allocation of costs between Pasha's interstate and intrastate operations, historical and forecasted cost of products and operations, market demand, etc.

<sup>98</sup>As previously indicated in footnote 18, Pasha's proposed tariff does not include rates for calls made to Barbers Point and

C.

Proposed Fuel Price Adjustment

Pasha seeks approval to include a Fuel Price Adjustment as part of its proposed tariff.<sup>99</sup> Pasha claims that the primary reason for this tariff provision is to prevent other water carriers from gaining a competitive advantage.<sup>100</sup> As noted by the Consumer Advocate, however, the primary purpose of fuel surcharges is to allow a utility to recover significant increases in its fuel costs where rising fuel prices cause substantial increases in the utility's operating expenses.<sup>101</sup>

Based on the evidence in the record, the commission finds that Pasha has not presented sufficient evidence to show that such a provision is necessary or reasonable. Pasha has not

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Pearl Harbor upon customer inducement. See Exhibit D to the Application, at 6. Pasha should amend its tariff to clearly reflect the sailing schedule and rates for calls made to Barbers Point and Pearl Harbor upon customer inducement.

<sup>99</sup>Id. at 23.

<sup>100</sup>See Pasha's Response to CA-IR-14(h)(1).

<sup>101</sup>Initial SOP at 27. A fuel surcharge essentially enables a utility to better respond to fluctuating fuel markets by allowing it to recover its increased fuel costs through a separate rate provision in its tariff, thereby minimizing the frequency and costs of having to file general rate application. A fuel price adjustment clause is conceptually similar to a fuel surcharge. The only difference is that a fuel price adjustment provision automatically increases or decreases a utility's rates to reflect fluctuations in fuel costs. See, e.g., In re Young Brothers, Limited, Docket No. 05-0302, Decision and Order No. 22514, filed on December 1, 2005 (denying YB's initial request to implement a fuel price adjustment clause); In re Young Brothers, Limited, Docket No. 2006-0396, Decision and Order No. 23714, filed on October 12, 2007, at 63 (approving YB's request to implement a fuel price adjustment clause as part of YB's 2007 general rate case).

presented any evidence that its projected fuel costs for its proposed intrastate operations are expected to be a significant portion of its operational expenses. Nor has it presented any evidence that the price of fuel is likely to increase in the near future. Moreover, Pasha has not presented any evidence as to how its proposed fuel price adjustment mechanism would operate, or how it would segregate the costs of fuel associated with its commission-authorized intrastate operations from its interstate operations.

Accordingly, Pasha's request to implement its proposed Fuel Price Adjustment is denied without prejudice at this time. In the event that Pasha determines that a Fuel Price Adjustment is necessary to account for fluctuating fuel costs, Pasha may file a general rate application with the commission.

V.

Orders

THE COMMISSION ORDERS:

1. Pasha's Application for a CPCN to operate as a water carrier of property between and among the ports of Honolulu, Kahului, Hilo, Nawiliwili, Barbers Point, and Pearl Harbor, is approved on an interim basis, subject to the following conditions and requirements:

- a. Pasha's CPCN is limited to the scope of service set forth in the Application (i.e. the use of only one vessel, the M/V Jean Anne, to be operated on a fortnightly service schedule between and among the

ports of Honolulu, Kahului, and Hilo, with calls to Nawiliwili, Barbers Point, and Pearl Harbor being made only upon customer request).

- b. Pasha shall be allowed to operate conditionally on an interim basis until December 31, 2013.
- c. During the interim operational period, Pasha shall comply with all reporting requirements for common carriers by water, including but not limited to, the filing of monthly and annual financial and statistical reports, as required under HRS § 271G-18 and HAR § 6-65-56. The monthly and annual reports shall include information regarding Pasha's monthly and annual intrastate revenue and cargo volume. As specified under HAR § 6-65-56, monthly financial and statistical reports shall be due on or before the last day of the month following the close of the previous calendar month. Annual financial and statistical reports shall be due by March 31 for the preceding calendar year.
- d. During the three-year interim operational period, Pasha shall file a cost of service study for commission review for each year. The cost of service study will include the current costs of providing each cargo category, and a breakdown between regulated and non-regulated revenues, expenses, and plant investment. The cost of

service studies shall be filed pursuant to the Protective Order issued in this docket.

(1) The first cost of service study shall be filed no later than January 31, 2011, and will be based on 2010 operating data (i.e., initial date of intrastate operations through December 31, 2010).

(2) The second cost of service study shall be filed no later than January 31, 2012 and will be based on 2011 operating data (i.e., January 1, 2011 through December 31, 2011).

(3) The third cost of service study shall be filed no later than January 31, 2013, and will be based on 2012 operating data (i.e., January 1, 2012 through December 31, 2012). The third cost of service study will be reviewed by the commission as part of its evaluation of Pasha's first two years of operations.

e. By January 31, 2013, Pasha shall submit a summary of its actual revenues, expenses, and cargo volume/tonnage statistics (covering its initial date of intrastate operations through December 31, 2012), and an updated economic analysis of the current and future state of Hawai'i's market, including economic forecasts of the demand for inter-island shipping services through 2017

(collectively referred to as the "Second Year Reports").

- f. By January 31, 2013, YB may submit further comments, expert testimony, and other evidence in support of its claims of adverse impact.
- g. By March 1, 2013, the Consumer Advocate shall submit further comments, expert testimony, and other evidence regarding Pasha's intrastate service and whether there are any adverse impacts to YB or the general public.
- h. The Consumer Advocate may also submit comments in response to other filings by Pasha, including but not limited to Pasha's monthly and annual financial and statistical reports, and cost of service studies. If, at any time, the Consumer Advocate determines that Pasha's intrastate service is causing significant adverse effects on YB's existing services and/or the public interest, the Consumer Advocate may file a report summarizing its analysis and recommendations.
- i. Upon receipt of Pasha's Second Year Reports and any additional briefings submitted by the Parties, the commission will then consider the additional evidence and issue a final decision and order.
- j. If, at any time, the commission determines that Pasha's intrastate service results in undue harm to YB's existing services and/or the public

interest, the commission reserves the right to impose additional conditions on Pasha's CPCN to mitigate any undue harm that may result from its operation, or, if mitigation is not feasible, the commission reserves the right to revoke Pasha's interim authority to operate.

- k. By October 4, 2010, Pasha shall provide the commission with sufficient documentation that it is in full compliance with all applicable governmental laws, rules, regulations, and requirements necessary to operate its proposed service within the State.

2. Pasha's proposed rules and regulations, and proposed rates are approved, on an interim basis, subject to the following:

- a. Pasha's request to implement its proposed Fuel Price Adjustment is denied.
- b. Consistent with this Interim Decision and Order, and as recommended by the Consumer Advocate, Pasha shall amend its initial tariff sheets to include following information: (1) an alternative header description that accurately reflects Pasha's proposed service, (2) a revised sailing schedule that more accurately reflects the one-way intrastate sailing route of San Diego to Honolulu to Kahului to Hilo to San Diego, (3) a definition of a "qualified shipper", (4) a definition for the



acronym "PUC"; (5) a section to address unexpected cancellations of Pasha's sailing schedule or the unavailability of the M/V Jean Anne, (6) a provision regarding customer complaints and dispute resolution, (7) a provision addressing calls to ports made upon customer inducement, (8) language clarifying how storage charges as shown on page 22 of the proposed tariff will be assessed. Pasha should also amend its tariff to clearly reflect the sailing schedule and rates for calls made to Barbers Point and Pearl Harbor upon customer inducement. In the event any tariff provision conflicts with State law, State law shall prevail.

- c. By October 4, 2010, Pasha shall file with the commission its revised tariff sheets, consisting of its rate schedules, charges, rules, and regulations for the provision of water carrier service under its interim CPCN. Pasha shall also concurrently serve copies of its revised tariff sheets on all Parties in this proceeding. Said filing shall not take effect without the commission's affirmative approval.
- d. Pasha shall post its approved tariff on its website.

3. No later than October 4, 2010, Pasha shall comply with all of the commission's requirements for common carriers by water, including but not limited to, filing a lawful tariff, and filing all appropriate insurance documents relating to both the vessels and to the harbor facilities, as required under HRS § 271G-13.

4. Beginning July 31, 2011 and December 31, 2011, and each calendar year thereafter until ordered otherwise by the commission, Pasha shall pay a public utility fee which shall be equal to one-fourth of one percent (0.25%) of the gross income from its public utility business during the preceding year, or a sum of \$30, whichever is greater, in accordance with HRS § 269-30(b).

5. By October 4, 2010, the Parties shall submit for the commission's review and approval a stipulated amended procedural schedule specifying the procedural deadlines set forth in this Interim Decision and Order, deadlines regarding additional discovery, and other procedural matters related to further proceedings in this docket. If the Parties are unable to agree, they shall submit separate proposed procedural orders for the commission's consideration within the same time period.

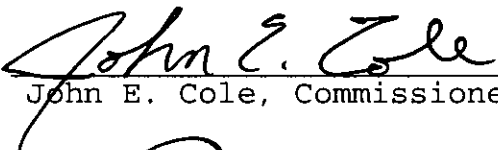
6. Failure to abide by any of the commission's rules, regulations, or orders within the specified time may constitute cause to void this Interim Decision and Order and Pasha's CPCN, and may also result in further regulatory action as authorized by State law.

7. Pasha shall not commence operations under this Interim Decision and Order until it has received written confirmation from the commission that all requirements and conditions set forth in Ordering Paragraphs 1(k), 2(b) - (d), and 3 above have been met to the satisfaction of the commission.

DONE at Honolulu, Hawaii SEP 20 2010.


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:

  
Bonita Y.M. Chang  
Commission Counsel

2009-0059.laa

CERTIFICATE OF SERVICE

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

DEAN NISHINA  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

CLIFFORD K. HIGA, ESQ.  
BRUCE NAKAMURA, ESQ.  
KOBAYASHI, SUGITA & GODA  
999 Bishop Street, Suite 2600  
Honolulu, HI 96813-4430

Attorneys for PASHA HAWAII TRANSPORT LINES LLC

CRAIG I. NAKANISHI, ESQ.  
DEVON I. PETERSON, ESQ.  
RUSH MOORE LLP  
737 Bishop Street, Suite 2400  
Honolulu, HI 96813

Attorneys for YOUNG BROTHERS, LIMITED

**LATE  
COMMENTS**

# *“Protect Hawaii’s Economy, Preserve Hawaii’s Jobs”*

Associated Builders & Contractors, Hawaii Chapter  
Hawaii Association of Realtors  
Hawaii Farm Bureau  
Hawaii Island Chamber of Commerce  
Hawaii Restaurant Association  
Hawaii Transportation Association  
Honolulu Japanese Chamber of Commerce  
Japanese Chamber of Commerce and Industry of  
Hawaii  
Kailua Chamber of Commerce

Kauai Chamber of Commerce  
Kona-Kohala Chamber of Commerce  
Land Use Research Foundation  
Maui Chamber of Commerce  
Molokai Chamber of Commerce  
Native Hawaiian Chamber of Commerce  
National Federation of Independent Businesses-  
Hawaii  
The Chamber of Commerce of Hawaii

**Testimony to the Senate Committee on Commerce & Consumer Protection**  
**Thursday, December 2, 2010**  
**9:30 a.m.**  
**Conference Room 229**  
**State Capitol**

## **Re: PUC’s Interim Decision and Order on Docket No. 2009-0059**

Dear Chair Baker, Vice Chair Taniguchi and members of the committee:

The *Alliance* to “Protect Hawaii’s Economy and Preserve Hawaii’s Jobs”, which is comprised of more than twenty-five business and trade organizations statewide, some of which are listed above, appreciates the opportunity to submit comments on the recent Interim Decision and Order issued on September 20, 2010, by the Public Utilities Commission (PUC).

Combined the *Alliance* comprises of more than 10,000 members employing more than 200,000 employees. A majority of the members are small businesses.

On Tuesday, November 30, the above-listed *Alliance* members met to prepare for the upcoming legislative session, as well as to discuss pertinent and important economic issues affecting the business community. One of the issues that came to the forefront was the recent decision made by the PUC.

The *Alliance* agreed to submit testimony expressing some of its concerns, which are:

- Lack of an open process including no hearings and requests for input by the general public,
- No evidentiary hearings, especially on the Neighbor Islands, to determine the impact of the applicant’s request, as well as how it would promote adequate, economical, and efficient service among carriers, and
- Potential and costly impact on small businesses.

The *Alliance* believes in a competitive business environment, but one that is on a level-playing field.

Thank you for the opportunity to submit comments. If you have any question, please contact Sherry Menor-McNamara of the Chamber of Commerce of Hawaii at (808) 545-4300 x394 or smenor-mcnamara@cochawaii.org.

# BIG ISLAND FARM BUREAU



P.O. Box 1630  
Kamuela, HI. 96743

Phone: 808-775-8015

Fax: 808-775-9115

E-mail: [bifb@hawaiiintel.net](mailto:bifb@hawaiiintel.net)

December 1, 2010

Re: PASHA Interim decision Information briefing

Hearing Date: Dec. 2, 2010 @ 9:30 AM

Senate Committee on Commerce & Consumer Protection in conference room 229

Chair Baker; Members of the Committee,  
Senate Committee on Commerce & Consumer Protection

My name is Lorie Farrell; I am the executive director for the Big Island Farm Bureau. We are the largest general agriculture organization on the Big Island; with 650 agricultural members/producers. We are unique in representing all agricultural commodities & utilize our diverse membership base to direct our policies. The Big Island Farm Bureau is comprised of the individual farm bureau chapters on the Big Island (Kona, Kohala, Hamakua, Ka'u, and Hilo) & were directly related to the Hawaii Farm Bureau Federation and affiliated with the American Farm Bureau Federation.

Our members are directly affected by any changes made in Inter-island transportation and we **Strongly Oppose** the recent PUC interim decision to allow PASHA selected inter-island transportation. The neighbor Island agriculture Industry clearly understand the direct impacts of any changes in barge transportation and we strongly feel that this decision will have serious impacts on the agriculture industry on Hawaii Island and Statewide! The majority of agriculture products are produced on neighbor Islands and shipped via barge service; our producers already face very difficult times and this decision will have serious ramification to agriculture. We respectfully request your support to help us correct this situation before adverse and un-reversible consequences occur. This decision creates an un-fair playing field; by allowing a "selected route" permit this will not create a fair and level playing field that will increase transportation service in Hawaii.

The Hawaii Water Carrier Act, policy governing these proceedings, clearly states that services must be provided without "unjust discrimination, undue preference or advantage or unfair or destructive competitive practices". We believe the recent PUC decision will create just such a situation in Hawaii.

*We respectfully ask that you consider the following points;*

- Every Department & Division within the State of Hawaii should be cautious in implementing new laws, rules & policy changes which will impact agriculture in Hawaii. The State's constitution reflects the decision to support local agriculture; we need decisions that reflect that support!

- The PUC recognized the State's Constitutional provision stating the importance of local agriculture to Hawaii's self sufficiency and granted YB the ability to provide up to 35% discounts for transport of fresh local island agricultural products. This latest decision does not appear to be consistent with the PUC's prior decision.
- **PASHA will not transport perishable commodities ...no refrigeration ...that means all fresh agricultural products will be left with YB. This will include refrigerated consumer goods so the impact will be felt by the entire community.**
- Interisland transportation is critical to Hawaii & the Hawaii Farm Bureau has worked with YB to implement an "Island Product" discount that is up to 35% of the shipping cost. We clearly understand that this discount is being subsidized by other lines but is important to local agriculture competing with mainland imports that at times pay no freight ...Why? Because the mainland imports piggyback on other heavier cargo, taking advantage of space and getting a "free ride". YB has said this discount may go away if their revenue streams decline with Pasha's entry into the marketplace.
- Frequency of Service is important to us. Our customers rely on Just in Time service. In the case of fresh agriculture products, the key is fresh ...they want it soon after it is harvested - not 1 week old ...they want frequent deliveries. YB may be forced to modify the frequency of their service as shipping volume declines. This will mean less fresh product, leaving our farmers and ranchers to use air transport which tends to be significantly more expensive. YB's purchase of the larger barges has improved productivity and we have no doubt that it has contained costs.
- If PASHA wants to enter the interisland transportation service, then enter it on the same service obligations that have bound YB for many years.
- YB has invested in infrastructure. They have improved their barges and there will be more improvements needed as new Food Safety regulations and efforts to reduce invasive species are ramped up. While all cargo carries invasive species, it is the agricultural products that has the highest risk - so all of this cargo, left with YB is of higher cost and require more investments. How can you take away business from an entity and then ask them to invest more money for the business they have left? Currently the cargo volume is down, so even a small loss of cargo can result in major impact. Shareholders of YB may not be willing to further invest in a business that they believe is of high risk.

Please support our agricultural producers with actions that ensure the sustainability for our future generations. Make transportation decisions that reflect all of our needs and create a place where all business can remain viable and economically sustainable!

*Respectfully,  
Lorie Farrell*

Lorie Farrell, Executive Director  
Big Island Farm Bureau



**Testimony to the Senate Committee on Commerce & Consumer Protection**  
**Thursday, December 2, 2010**  
**9:30 a.m.**  
**Conference Room 229**  
**State Capitol**

**Re: PUC's Interim Decision and Order on Docket No. 2009-0059**

Dear Chair Baker, Vice Chair Taniguchi and members of the committee:

The Chamber's mission is to improve the state's economy and business climate so that businesses in Hawaii can thrive and expand. We believe our mission has much in common with the policy of Chapter 271G of the Hawaii Revised Statutes, which is to promote economical, and efficient service among water carriers and encourage the establishment and maintenance of reasonable rates all to the end of developing, coordinating, and preserving a sound transportation system by water.

After carefully considering the interests of our members and all the people they serve – i.e., directly and indirectly, virtually all the people in our state, we wish to express our views on the interim decision made by the Public Utilities Commission.

The Chamber believes in a business environment spurred by competition and in this case, with the following components:

- Promotion of adequate, economical, and efficient service among carriers,
- Maintenance of reasonable rates and levels of service for transportation to help businesses work through and ultimately out of the present recession,
- Development of a fair regulatory and business climate with predictable and consistently applied rules without undue preference or advantage, or unfair or destructive competitive practices, and
- Development, coordination, and preservation of a sound transportation system by water that fulfills the system's necessary role in businesses thriving and expanding.

We are concerned that the recent decision does not provide a level-playing field, which in turn, could have a costly impact on small businesses. Furthermore, we would have supported a more open process which allowed hearings for different stakeholders to state their positions. Many businesses on the Neighbor Islands have expressed concerns about the potential impact to them, their businesses and their customers (residents).

Thank you for the opportunity to submit comments.

Council Chair  
Danny A. Mateo

Director of Council Services  
Ken Fukuoka



Vice-Chair  
Michael J. Molina

Council Members  
Gladys C. Baisa  
Jo Anne Johnson  
Sol P. Kaho'ohalahala  
Bill Kauakea Medeiros  
Wayne K. Nishiki  
Joseph Pontanilla  
Michael P. Victorino

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/council](http://www.mauicounty.gov/council)

DEC 02 2010

November 30, 2010

Honorable Rosalyn H. Baker, Chair  
Senate Committee on Commerce and Consumer Protection  
Hawaii State Capitol, Room 230  
415 South Beretania Street  
Honolulu, HI 96813

Dear Senator Baker:

**SUBJECT: PASHA INTERIM DECISION AND ORDER AND IMPACTS  
ON NEIGHBOR ISLAND COMMUNITIES**

One step forward, two steps back. Once again a Public Utilities Commission (PUC) decision could put another nail in the coffin for Molokai. The recent decision to grant an interim certificate of public convenience (CPCN) to Pasha Hawaii Transport Lines, LLC threatens to unravel an already precarious and fragile economic thread transporting goods to my island community.

As an isolated community continuously impacted by transportation or lack thereof, it is imperative that we be a part of the solution! The disregard by the PUC for community input of Molokai and Lanai is unconscionable. I thank your committee for reviewing this matter and recognizing the importance of the neighbor islands who will be impacted by the PUC's decision. How do you make an informed decision without all the facts? The PUC needs to reconsider its granting of the CPCN and hold neighbor island public hearings to hear our voices. We are the communities that will live or die from the impacts of their decision.

Thank you for your attention to this matter.

Respectfully,

A handwritten signature in black ink that reads "Danny A. Mateo".

DANNY A. MATEO  
Council Chair

cc: Molokai Council Office  
Barbara Haliniak, President, Molokai Chamber of Commerce Foundation

Aloha,

This letter is in regards to the maritime freight service to the island of Lanai. The people of Lanai and my company will greatly suffer if Pasha Group is allowed to choose more profitable ports over ports such as Kaunapali on Lanai. The cost of living here on Lanai is already high, the PUC decision will only make daily life harder for the people of Lanai.

Please do whatever possible to have the PUC reconsider their decision and to hold public hearings on Lanai to hear our community concerns,

--

"In God We Trust"

Sam Dimaya Jr.

Island Appliance Sales & Service, Inc.

346 Ahakea St.

PO Box 630479

Lanai City, HI 96763

PH: 808-559-0856

FAX: 888-250-4808

[isleappl@gmail.com](mailto:isleappl@gmail.com)

Lic.# C-31008

Please submit this letter as testimony for the December 2, 2010 Senate Commerce and Consumer Protection Committee informational briefing at 9:30 a.m. in conference room 229. Thank you.

Dear Senator Baker:

We are strongly against Pasha Hawaii's request to obtain a certificate of public convenience and necessity (CPCN). We feel that it is unfair for them to just service the profit making routes and not the communities of Molokai and Lanai, like Young Brothers does. If they are not required to serve Molokai and Lanai(which are not profitable routes), they are at a greater advantage over Young Brothers, who is required to service these routes.

We are afraid that Young Brothers will have to raise our rates and the possibility of reduced barge service. We definitely need to have the barge come in twice a week to help keep our shelves stocked with perishable and non-perishable items and for the farmers to ship out their products. The consumer will no doubt have to pay for any increases and this, will impact our community greatly. Many of our customers are unemployed, on state assistance or on a fixed income.

We ask your committee's support to demand that the PUC reconsider its decision to grant Pasha Hawaii an interim CPCN and to hold public hearings on all neighbor islands.

Respectfully,

Sonya Yuen, owner

Kualapuu Market, Ltd.

PO Box 240  
Kualapuu, Molokai, HI 96757  
808-567-6243

**Testimony of**

Riki Hokama

Maui County Council, Councilmember-Elect

**Before:**

Senate Committee on Consumer Protection

The Honorable Rosalyn H. Baker, Chair

The Honorable Brian T. Taniguchi, Vice Chair

December 2, 2010

9:30 am

State Capital, Conference Room 229

**Informational Briefing regarding Public Utilities Commission in Docket No. 2009-0059  
Interim Decision and Order dated September 20, 2010, In re Application of Pasha Hawaii  
Transport Lines LLC for a Certificate of Public Convenience and Necessity to Provide Service  
Between and Among the Ports of Honolulu, Kahului, Hilo, and Nawiliwili.**

Chair Baker, Vice Chair Taniguchi and committee members:

Thank you for this opportunity to address your committee.

As a former and returning member of the Maui County Council, I have very serious concerns regarding the PUC's recent decision to allow Pasha Hawaii Transport Lines (Pasha) to obtain a certificate of public convenience and necessity to provide interisland water carrier services to select ports within the State of Hawaii. The negative impact this decision will have on my constituents on the Island of Lanai, all islands of Maui County, and in fact to the entire state, is significant.

As you know, Young Brothers currently serves all main islands of our State, aside from Niihau and Kaho'olawe. Those of us who reside and do business on the neighbor islands are acutely aware of the fact that reliable, affordable, and convenient interisland cargo service is a vital lifeline for the Hawaiian Islands.

But the Pasha decision may well change the economics of inter-island cargo service at all ports. Under present law, it is unfair to the incumbent carrier and it is not in the public interest to allow Pasha to provide service under rules different from that which is applicable to Young Brothers. However, this is exactly what the PUC has decided to allow with its interim Decision & Order.

Young Brothers customers, especially neighbor businesses, have expressed grave and legitimate concerns to me about the effects of diminished shipping services on their economic future. Drastic changes to the frequency and affordability of service threatens the viability of all neighbor island businesses and the vitality of islands such as Lanai.

A plan that could substantially threaten the very existence of interisland water carrier service to certain islands is clearly not a proposal that is required by public convenience and necessity and, equally clearly, is not in the statewide public interest.

Some people have even suggested deregulating the market entirely to ensure a level playing field. I find this suggestion completely unacceptable. Such a drastic change may address the issue of the need to regulate carriers under the same rules, but it does so by placing service to Lanai and Molokai - as we know and depend on it today - at great risk.

Despite the relatively small size of our communities, residents of the islands of Lanai and Molokai are equal participants in the determination of “public convenience and necessity” and “public interest”. My constituents on Lanai risk losing any form of service based on the new economics contemplated under the Pasha application.

The responsibility of ensuring reliable, affordable and convenient interisland cargo service to the people of this State does not lie solely with Young Brothers, or even with the PUC. It also lays with all of us elected officials whose constituents depend on this essential service.

This is this very type of public harm that we public officials are specifically charged to prevent. Let us take action now to ensure that this risk never has an opportunity to become reality.

Dear Senator Baker,

I am whole heartedly against the PUC granting PASHA access to some ports without providing service to Molokai & Lanai. Again, we are being penalized for being a small Island, yet without the barge service our economy would be flatlined immediately. It is not right for the State to grant unfair advantage for one Company over another. It's goes back to my typical saying that "The only people who can afford to live in Hawaii are the people that come from out of State." Another example being, when the State bailed out Hawaiian Airlines, not once, but twice with taxpayers money, yet they do not service Molokai.

For my small business Young Brothers as been fair, and always included a dialog process for all their rate increases. Young Brothers continues to come to Molokai and see how they can help us. They also contribute to many activities here on the Island through grants and scholarships. They are truly committed to our community.

It is my opinion that this measure should be stopped, because it would give one Company unfair advantage over another.

Respectfully Submitted,  
Liette Corpus  
Sundown Deli  
Kaunakakai, Molokai