



C.H. Powell Company

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BEFORE THE FEDERAL MARITIME COMMISSION WASHINGTON, D.C.

COMMENTS SUBMITTED IN RELATION TO DOCKET NUMBER 11-22, NEGOTIATED RATE ARRANGEMENTS – RESPONSE TO NOI

I am David E. Powell, Vice President of C. H. Powell Company, responsible for its NVOCC division. C. H. Powell Company is an Ocean Transportation Intermediary licensed as both an Ocean Freight Forwarder, and a Non-Vessel-Operating Common Carrier, under license number 000176NF. C.H. Powell Company operates 17 offices at major USA ports. C. H. Powell Company has an ownership interest in affiliated companies in China and the Netherlands. C.H. Powell Company has more than 50 dedicated agents throughout the world. C. H. Powell Company transacts approximately 13,000 NVOCC shipments per year.

I submitted comments in June, 2008, and again in June 2010, supporting regulatory relief for NVOCCs in the area of tariff-based rate filing. I sincerely appreciate the consideration given to my comments and the comments of the shipping community by the Federal Maritime Commission as evidenced by the partial relief provided through Negotiated Rate Arrangements.

However, the NRA exemption still contains too many ambiguities and restrictions for C.H. Powell Company to adopt its use.

The requirement to prominently post notice on all bills of lading that shipments are moving pursuant to an NRA is at the same time too vague in its definition, too administratively burdensome to apply on a conditional basis, and redundant, in consideration of the corresponding requirement that the shipper receive and assent to memorialized rates in writing in advance of shipment.

The definition of what constitutes shipper's assent in the current rule is also too vague, and seemingly burdensome, when combined with the recordkeeping requirements. Shippers and NVOCCs are seeking relief from time-consuming and meaningless documentation, as required with unpopular NSAs. If an NVOCC can demonstrate that it has presented applicable rates to a shipper prior to receipt of cargo, and the shipper subsequently tenders the cargo, and willingly settles the rated charges, these subsequent actions should be considered post-facto proof of prior assent.



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NRAs need to be more flexible, including allowance for adjustments, surcharges, GRIs, rate ranges, and service terms. The intent of the exemption is to provide more willing flexibility to the shipper and the NVOCC. In periods of rapidly increasing or decreasing rates, and during periods of carrier service/rate adjustments, shippers often rely on NVOCCs to adjust their service offerings on short notice, and are willing to pay higher rates for expedited shipments, or conditional rates depending upon the exact service eventually provided. NRAs should facilitate such mutually agreed flexibility, not restrict it.

NRAs should be made available to all lawful NVOCCs, including foreign registered companies. All arguments in favor of regulatory relief apply equally to foreign registered NVOCCs. The shipping public makes no distinction between US licensed NVOCCs and foreign registered NVOCCs, nor does it gain any more practical benefit from the regulatory burden placed on one type of NVOCC than on the other. Any discrimination in favor of US licensed entities will open them up to corresponding adverse discrimination from foreign governments.

I declare under penalty of perjury that I have read the foregoing and it is true and correct to the best of my knowledge, information and belief.

Executed on March 16, 2012

David E. Powell