

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 11-22

**NON-VESSEL-OPERATING COMMON CARRIER NEGOTIATED RATE
ARRANGEMENTS; TARIFF FILING EXEMPTION**

COMMENTS

We are filing these comments on behalf of a non-vessel-operating common carrier (“NVOCC”) that does not wish to be identified. The company whose views we are presenting has been an NVOCC for almost 25 years. Its two principals have over 80 years of experience between them in the ocean transportation industry. This NVOCC is licensed, bonded, and maintains a tariff as required by the Shipping Act of 1984. It operates in the trade lanes between the United States and Northern Europe including Russia and the CIS, as well as Asia. It is a small to medium-sized NVOCC and operates primarily in the United States export trades.

While this company appreciates the Commission’s willingness to provide an exemption from tariff filing, it has found that the Negotiated Rate Arrangement (“NRA”) is of no practical use due to the many technical requirements that destroy the commercial viability of this exemption. NVOCCs today operate in a highly competitive, complex commercial environment where shipping rates and terms of service change rapidly and the ability to react quickly and flexibly is a primary criterion of successful commercial relationships between NVOCCs and their customers. As the Commission well knows, NVOCC tariffs are a needless and costly requirement that serve absolutely no purpose for shippers. As the NRAs are currently structured, this NVOCC finds that they suffer from many of the same defects as tariffs. For example, the NRA is unnecessarily bureaucratic in its requirements that notices be printed on every bill of lading for shipments subject to an NRA. Whether or not shipments are subject to an NRA will be clear from the terms of the NRA itself. Forcing NVOCCs to put a note on individual bills of

loading does not serve a useful purpose for either the NVOCC or its customer and simply acts as an impediment to use of the NRA procedure. Further, the requirement that NRAs contain the legal name of the NVOCC's customer and the titles and addresses of the persons entering into the NRA are impractical in this NVOCC's experience. Customers in the NVOCC market are used to seeing rate quotes to which they can quickly react by making bookings. They do not have the patience or understanding to meet the overly-formal requirements of the NRA process. It should be simply enough that the identity of the NVOCC and the customer in the NRA agreement are ascertainable from the exchange of the documentation - - usually emails - - that will constitute the NRA. More is not necessary.

More importantly, the lack of commercial flexibility in the current NRA process is a major impediment to their use. The fact that NRAs may not be amended once they take effect and may not include all of the commercial terms ordinarily used in rate arrangements between NVOCCs and shippers makes NRAs difficult to explain to customers and not appropriate as practical commercial vehicles for customer agreements. For all of these reasons, this NVOCC does not use NRA's in its business.

This NVOCC agrees with the Commission that the essential elements of NRA agreements must be ascertainable from the communications between the NVOCC and the shipper. But this can be more easily accomplished than is currently the case. This NVOCC, therefore, suggests that NRAs be freely negotiable between NVOCCs and their customers with only the following requirements:

- Each NRA should have an identifiable NRA number.
- NRAs should show the date on which they are agreed to commence.
- There should be a description of the commodities subject to the NRA.
- The NRA should contain the origin and destination points, as well as the basis of the rate (i.e., port-to-port; door-to-door; etc.).
- The NRA should contain the rate.
- The NRA should contain a valid through date.

- If appropriate for an individual NRA, the freight forwarder compensation amount and any comments providing additional terms to the NRA should be included.

If an agreement between a shipper and an NVOCC contains all of these elements and is readily ascertainable from the exchange of correspondence between the parties, that is all that should be required. If the Commission would adopt this recommendation for NRAs, this NVOCC is confident that they would be adopted as commercially useful tools throughout the NVOCC industry, which would lead to a significant decrease in tariff filing costs and literally millions of dollars in savings being passed on to the shipping public.

Respectfully submitted,



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