

# FEDERAL MARITIME COMMISSION

PETITION OF APL CO. PTE LTD  
FOR AN EXEMPTION FROM  
COMMISSION REGULATIONS

Petition No. P3-16

Served: September 29, 2016

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**BY THE COMMISSION:** Mario CORDERO, *Chairman*; Rebecca F. DYE, Michael A. KHOURI, William P. DOYLE, and Daniel B. MAFFEI, *Commissioners*.

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## **Order Granting Petition**

### **I. Petition**

On August 16, 2016, APL Co. Pte. Ltd., on behalf of itself and American President Lines, Ltd. (APL or Petitioner), petitioned the Federal Maritime Commission (Commission) pursuant to 46 C.F.R. § 502.76 of the Commission's Rules of Practice and Procedure, for an exemption from the Commission's regulation requiring individual service contract amendments, 46 C.F.R. § 530.10, and the regulation prohibiting duplicative tariffs, 46 C.F.R. § 520.7(a)(4). The Petition was published in the Federal Register on August 24, 2016, 81 Fed. Reg. 57,908, and the comment period closed on September 1, 2016. No comments were received.

The petition states that, at the time of filing, APL was

majority owned by CMA CGM S.A. (CMA CGM), a vessel operating common carrier headquartered in Marseilles, France. Petitioner explains, “On or about September 1, 2016, APL will become delisted from the Singaporean stock exchange and be 100% owned by CMA CGM. At that time, CMA CGM will begin to consolidate certain operations under its various brands worldwide.” Pet. at 1. In particular, CMA CGM will transfer the slot allocations of its wholly owned subsidiary ANL Singapore Pte. Ltd. (ANL) to APL effective October 1, 2016.

Petitioner requests that in lieu of publishing amendments to each of the approximately 600 service contracts affected by the transfer of ANL’s transpacific business, “the Commission permit APL to send a universal notice to the Commission and to each of the service contract parties.” Pet. at 2. Petitioners also seek a waiver to permit insertion of notices in existing ANL and new APL tariffs because existing ANL tariffs “will be taken over by APL and will be renumbered and republished under APL’s organization number.” *Id.* Petitioner believes that it would be an undue burden on APL and the shipper parties to its approximately 600 service contracts to prepare and file individual amendments for each of these service contracts. *Id.*

Further, APL asserts that the new Organization Number would create a discrepancy between the tariff number identified by the existing ANL service contracts as governing tariffs and the tariff numbers as republished by APL. To avoid the discrepancy, APL requests that the Commission permit a waiver from 46 C.F.R. § 530.10 and permit a notice to be inserted in the existing ANL tariffs and in the new APL tariffs. *Id.*

APL argues,

“...the purely administrative exemption will not negatively impact competition or commerce. Moreover, it will benefit the shipper contract parties by reducing the administrative burden. Nor will

shippers be negatively impacted by the assignment as their contract terms will be honored and the same services provided.” Pet. at 3.

On August 24, 2016, the Commission published a notice in the Federal Register requesting comment on the Petition. 81 Fed. Reg. 57,908. The comment period closed on September 1, 2016, and the Commission received no comments.

## **II. Discussion**

APL requested an exemption from 46 C.F.R. § 530.10 and from 46 C.F.R. § 520.7(a)(4). Section 530.10 provides, in relevant part, that “[s]ervice contracts may be amended by mutual agreement of the parties to the contract.” 46 C.F.R. § 530.10(b). Amendments to service contracts must be filed with the Commission in the manner set forth in 46 C.F.R. § 530.8 and appendix A to 46 C.F.R. part 530.

Section 520.7(a)(4) requires that published tariffs “[n]ot duplicate or conflict with any other tariff publication.” The new APL tariffs would likely be duplicative of or conflict with existing tariffs applicable to current APL service contracts.

Exemptions from the requirements of Part 520 and 530 are governed by 46 U.S.C. § 40103 (section 16 of the Shipping Act of 1984) and the Commission’s Rules of Practice and Procedure. 46 C.F.R. §§ 520.13(a); 530.13(b). Section 40103 permits the Commission to grant an exemption if it “will not result in substantial reduction in competition or be detrimental to commerce.” The Commission may also attach conditions to an exemption. 46 U.S.C. § 40103(a).

The Commission has generally granted requests for exemption from the requirements in 46 C.F.R. §§ 530.10 and 520.7(a)(4) in similar situations. *See Petition of COSCO Container Lines Company Ltd.*, No. P1-16 (FMC Feb. 29, 2016); *see also Petition of Crowley Caribbean Servs., LLC*, No. P4- 15 (FMC Jan.

12, 2016); *Petition of Compañía Sud Americana de Vapores S.A.*, 33 S.R.R. 934 (FMC 2015); *Petition of Hanjin Shipping Co., Ltd.*, 31 S.R.R. 1080 (FMC 2009). The Commission similarly concludes that an exemption from §§ 520.7(a)(4) and 530.10(b) in this case will reduce the filing burdens on both APL and the shipper parties and will not result in a substantial reduction in competition or be detrimental to commerce.

The Commission finds that the potential for negative competition or commercial effects resulting from the exemption is limited given APL's assurances that shipper parties will receive the same terms and service they received from ANL. Moreover, the Commission believes that APL's proposed measures, in conjunction with the conditions prescribed by the Commission below, offer adequate protection against any potential harm to competition or commerce.

The Commission is placing additional conditions on the exemption as follows. First, APL must file a universal notice in SERVCON enumerating all affected service contracts. The Commission has required similar notices in past cases to ensure that the Commission has accurate information regarding the current terms of those contracts.

Second, APL must allow shippers the option of having formal amendments to their service contracts be prepared and must notify shippers of this option. The Commission notes that the text of APL's proposed notice regarding the assignment requests that shipper parties notify APL via e-mail within 7 days after receipt of the notice, if a formal consent is required, and if the shipper party does not reply by that time or continues to tender cargo after October 1, 2016, APL will assume that the shipper party agreed to the assignment and does not require a formal consent. Unlike notices by carriers seeking an exemption in similar circumstances, however, APL's notice only expressly allows shippers to request a formal consent and does not expressly provide for a shipper to request that an individual amendment be prepared. *See Petition of COSCO Container Lines*

*Company Ltd.*, No. P1-16 (FMC Feb. 29, 2016). Some shippers may want their service contracts to reflect the actual terms of the agreement, including the assignment. The Commission believes that such a request would be reasonable and should be permitted.

In addition, as noted above, the notice provides for two situations in which shippers will be deemed to have consented to the assignment of their contracts from ANL to APL: if they have not responded within 7 days after receipt of the notice or if they continue to tender cargo after October 1, 2016. It is unclear from the petition when APL anticipated sending out its notice, but assuming it is provided less than 7 days prior to October 1, 2016, APL should still allow shipper parties 7 days to request a formal consent or amendment.

Finally, with respect to the renumbering and republishing of ANL tariffs as APL tariffs, the Commission has, in previous determinations, set an expiration date for the new tariffs shortly after the expiration date of the majority of the affected service contracts. *See Petition of COSCO Container Lines Company Ltd.*, No. P1-16 (FMC Feb. 29, 2016). Although APL did not specify when the affected service contracts expire, the Commission notes that the customary service contract term runs until April 30, and the Commission assumes that the affected ANL service contracts will expire on or around April 30, 2017. Accordingly, the new APL tariffs may remain in effect only until June 1, 2017, to allow shippers to retain the same terms for their existing service contracts. To the extent that an exemption is needed beyond June 1, 2017, the Commission will consider extending the exemption in response to a timely filed petition from APL. Any further petition should describe the continuing need for the exemption and a new proposed termination date for the tariffs.

### **III. Conclusion**

For the reasons discussed above, the Commission is granting

APL's Petition, subject to certain conditions.

THEREFORE, IT IS ORDERED, that APL's Petition is GRANTED, provided that:

1. APL notifies, in the form and manner set forth in the Petition, all affected shippers of the change in carrier parties to the service contracts, and provides at least seven (7) calendar days for shipper parties to request a formal consent or individual amendment to a service contract;
2. APL files, not later than October 1, 2016, a Universal Notice with the Commission through SERVCON, enumerating all affected service contracts;
3. APL inserts a Notice in the existing ANL tariffs and in the new APL tariffs, respectively, explaining the updated governing tariff numbers;
4. The new APL tariffs will terminate on or before June 1, 2017; and
5. If any affected shipper opts to file an individual amendment, such amendment shall be promptly filed pursuant to 46 C.F.R. § 530.10(b).

IT IS FURTHER ORDERED, that this proceeding is discontinued.

By the Commission.

Rachel E. Dickon  
Assistant Secretary