

FEDERAL MARITIME COMMISSION

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CLOSED SESSION

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MONDAY, APRIL 13, 2015

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The meeting of the Federal Maritime Commission convened in the First Floor Hearing Room, 800 North Capitol Street, N.W., Washington, D.C., pursuant to notice at 10:00 a.m., Mario Cordero, Chairman, presiding.

COMMISSIONERS PRESENT:

MARIO CORDERO, Chairman

WILLIAM P. DOYLE, Commissioner

REBECCA F. DYE, Commissioner

MICHAEL A. KHOURI, Commissioner

RICHARD A. LIDINSKY, Commissioner

COMMISSION COUNSEL PRESENT:

JOHN A. MORAN, Counsel to
Commissioner Khouri

BENJAMIN K. TROGDON, Counsel to
Chairman Cordero

JEWEL JENNINGS-WRIGHT, Counsel to
Commissioner Lidinsky

1 DAVID TUBMAN, Counsel to
2 Commissioner Doyle

3 STAFF PRESENT:

4 KAREN V. GREGORY, Secretary

5 VERN W. HILL, Managing Director

6 TYLER J. WOOD, General Counsel

7 RACHEL DICKON, Assistant Secretary

8 REBECCA A. FENNEMAN, Director, Office of
9 Consumer Affairs & Dispute Resolution
 Services

10 FLORENCE A. CARR, Director,
11 Bureau of Trade Analysis

12 GARY G. KARDIAN, Director, Office of
 Service Contracts & Tariffs

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C O N T E N T S

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1 P R O C E E D I N G S

2 CHAIRMAN CORDERO: Good morning.

3 Welcome on this great day on what we see, the
4 winter's over now apparently, so now we're going
5 to move forward with our April 13th meeting.

6 Thank you for being here.

7 Before we begin our agenda item, let me
8 welcome some new employees that we have here.

9 First of all I'd like to welcome Christina Tackett
10 who has joined our General Counsel's office; Mr.
11 Lee Stag who has joined the Bureau of
12 Certification and Licensing as a Program Support
13 Assistant; Ms. Jennifer Carter who has joined the
14 Office of Human Resources as an HR Specialist; and
15 last an in-house person who now has a new
16 position, Glenda Singletary who has taken a new
17 job in BOE as an Investigative Analyst. So
18 welcome to these new positions, and again, we're
19 very blessed with the opportunity to again deal
20 with our resource issues. And as I mentioned at
21 the all-hands meeting, hopefully many of you see
22 that, in fact, we're now able to address some of

1 those issues. And, hopefully, now we're getting
2 to the point where we will fully address some of
3 the backfill positions that we've had in the past
4 year.

5 Also before I begin, I also want to
6 acknowledge Jerry Hospital, Director of the Office
7 of Transportation Intermediaries. Jerry has been
8 with the Commission for more than 40 years and is
9 retiring next month. So, Jerry, I wish you the
10 best, you and your family. Thank you so much for
11 your service, not only as it relates to the
12 specific job description that you have fulfilled
13 for the last 40 years, but the extra activities
14 such as a great member of the Capitol Run last
15 year. I assume you're going to continue your
16 running activities? You have a lot more time, so
17 looking forward to see you run the marathon now.
18 You'll have plenty of time to get in shape to do
19 that.

20 Madam Secretary, let us now move forward
21 with the agenda, and if you could announce our
22 item?

1 MS. GREGORY: Good morning, Mr. Chairman
2 and Commissioners. The first item on your agenda
3 today, the only item on your agenda today, is a
4 briefing on a staff report on rules, rates, and
5 practices relating to detention, demurrage, and
6 free time for containerized imports and exports
7 moving through selected U.S. ports. This item
8 will be presented by Rebecca Fenneman, and I
9 believe Florence Carr and Gary are also here with
10 her.

11 CHAIRMAN CORDERO: Thank you. Ms.
12 Fenneman?

13 MS. FENNEMAN: Good morning, Chairman.
14 Good morning, Commissioners. Let me get my slides
15 queued up here.

16 Good morning. You have before you a
17 report, which is the first part of a larger study
18 being produced by the Bureau of Trade Analysis on
19 congestion in follow up to the four port forums
20 that were held by the Commission last fall. We
21 were directed to review the free time, demurrage,
22 and detention rates, rules, and practices of

1 vessel-operating common carriers and marine
2 terminal operators because those were the issues
3 the participants in the forums were most vocal
4 about.

5 The report is a result of that review.
6 The report defines the terms, describes the
7 practices, compares free time and daily charges
8 across carriers, terminals, and import/export, and
9 also compares demurrage against detention. It
10 offers possible approaches the industry might take
11 to reduce costs associated with inefficiency that
12 high cost for demurrage and detention would
13 represent and identifies the procedural tools that
14 the FMC might have if it wanted to explore this
15 further. The report makes no recommendation for
16 Commission action.

17 The report has many notable limitations.
18 First, it uses tariff data. I started with tariff
19 data because it was my belief that even though
20 most cargo is carried under service contract
21 freight rates, demurrage and detention rates and
22 free time are not specifically addressed in

1 service contracts. Second, it examines only
2 standard dry 20 foot containers. Third, it does
3 not fully examine per diem charges. Fourth, it
4 examines only carrier haulage terms. It does not
5 examine line demurrage under merchant haulage
6 terms. And finally, with the exceptions of
7 generalized complaints from cargo interests, it
8 does not contain explanations or perspectives of
9 the industry. It is, therefore, not as complete
10 or comprehensive as a true study would be, rather
11 it's a general assessment and explanation.

12 I'd like to explain the methodology and
13 the data that I used. [Can I have the first
14 slide?] First, I targeted the top five by overall
15 U.S. market share vessel-operating common carriers
16 because it was thought important to have at least
17 one member of the G6 alliance; I later added OOCL.
18 I looked at each of those six carriers' tariff
19 publications. Here are the tariff rules I looked
20 at. These are just the relevant pages. I
21 determined what would be free time, demurrage, and
22 detention for a standard dry 20 foot container. I

1 did this for each of the six vessel-operating
2 common carriers at each of the 32 terminals, which
3 were all the terminal operators at Los
4 Angeles/Long Beach, Oakland, Seattle/Tacoma, New
5 York/New Jersey, Virginia, Savannah, Charleston,
6 and Houston. These are the schedules of the port
7 authorities and the marine terminal operators that
8 I examined. And, again, these are just the
9 demurrage pages and the detention pages. So all
10 that raw data looks like this.

11 In order to do an apples-to-apples
12 comparison of costs because there are differences
13 in free time given by VOCCs in each terminal as
14 well as different rates for demurrage and for
15 detention on import and export, with BTA's help I
16 did a what-if analysis; that is, what if an import
17 container remains on the terminal for six days?
18 And what would happen if a container is not
19 returned to the carrier for 12 days? The same
20 approach was used for exports and then we compared
21 those results. [Can you go to the next slide?]
22 So these are the comparisons. [And if you could

1 just go to the last bar graph.] So here those
2 hypotheticals are put into graphic form and some
3 of these were included as appendices to the
4 report.

5 In conclusion, there may be individual
6 cases in which assessing demurrage or detention
7 charges on the cargo interest seems unfair or
8 unreasonable or where free time should have been
9 extended under the carrier's own tariff terms, but
10 were not. None of the tariff rules I examined
11 appeared to be facially unfair or unreasonable.
12 CADRS and other offices, however, get complaints
13 daily from importers and exporters about demurrage
14 and detention charges they did not anticipate and
15 feel they cannot avoid. We also get complaints
16 about per diem charges to truckers, but we did not
17 examine those practices in this report.

18 There's a great deal of confusion about
19 who controls the charges and who charges whom.
20 This report was an attempt to collect and explain
21 the industry's practices and to quantify the
22 potential impacts of those practices on cargo

1 moving in and out of the U.S. by ocean common
2 carriage under tariffs. The report makes no
3 recommendation for Commission action. I'd be
4 happy to answer any questions.

5 CHAIRMAN CORDERO: Thank you very much,
6 Ms. Fenneman, for that presentation and the report
7 submitted by you and your staff. At this point
8 I'll bring it back to the Commission and at this
9 point I'll defer to Commissioner Dye.

10 COMMISSIONER DYE: Thank you, Mr.
11 Chairman. Thank you for the briefing. I know
12 that was a difficult undertaking because the
13 Commission has never been involved in these sorts
14 of charges that are implemented through tariffs.
15 And I appreciate your discussing the limits of
16 this paper, what it isn't as much as what it is,
17 and the fact that it doesn't actually include a
18 perspective from the carriers and what the charges
19 are intended to represent. So I appreciate it.
20 Thank you very much.

21 MS. FENNEMAN: Thank you.

22 CHAIRMAN CORDERO: Commissioner

1 Lidinsky.

2 COMMISSIONER LIDINSKY: Thank you, and
3 thank you for a very comprehensive report. Let me
4 mention before I make a comment on the report that
5 I was prepared to make a motion, which I'm not
6 going to make now, to have this meeting in public
7 because I think your hard work and the hard work
8 of the Commissioner's offices in having the
9 hearings should be made public and done in public
10 because we've got nothing to be ashamed of or hide
11 from the public on this matter.

12 So having said that, I would hope that
13 we would move to adopt this report, make it
14 public, and move toward a solution for the people
15 out there who are looking to us to help them in
16 this very serious time.

17 CHAIRMAN CORDERO: Commissioner Khouri.

18 COMMISSIONER KHOURI: Thank you, Mr.
19 Chairman. Thank you. I'm trying to get clear in
20 my own mind what it is this report informs me of,
21 and it begins with the forums and the information.
22 I understand your last statement; you're not

1 looking for Commission action. However, with what
2 my fellow Commissioner, Commissioner Lidinsky,
3 just said in terms of informing the public, if I
4 can't figure out what this report is informing me
5 of, I fear that the public may have their
6 questions as well. So if I could just go through
7 just a series of questions that came to my mind.

8 This started actually in mid-summer.
9 The congestion issue really manifested itself in
10 the fall, has moved forward, and I applaud CADRS'
11 work in addressing so many inquiries from various
12 stakeholders. Rough number, how many phone calls
13 from different constituents have you all been
14 fielding in the last -- whatever that would be --
15 six, seven, eight months?

16 MS. FENNEMAN: I don't know if I could
17 give you a number of phone calls. I can give you
18 a number of active cases or ombuds requests for
19 assistance. Right now we have I believe over 80
20 requests pending. We have closed more than 40
21 from the beginning of the fiscal year, but that
22 does not include just simply phone calls or

1 responses to questions or conversations with
2 stakeholders. So we have many, many that are
3 pending at this point.

4 COMMISSIONER KHOURI: So probably in the
5 hundreds then if you want to look at it that way.

6 MS. FENNEMAN: Right, yes.

7 COMMISSIONER KHOURI: The section on
8 demurrage and detention rates, et cetera, and
9 perhaps reflecting Commissioner Dye's question
10 here, is there a suggestion just by putting the
11 data out there that rates are too high or that
12 they're unfair?

13 MS. FENNEMAN: I don't think so. I
14 think actually the suggestion -- I was a little
15 surprised, frankly, to find that each of the
16 carriers that I examined and each of the different
17 terminals had very different approaches at least
18 on the demurrage side. I was surprised that there
19 would be such differences in daily rates.

20 COMMISSIONER KHOURI: Sounds like
21 competition.

22 MS. FENNEMAN: I think that -- and maybe

1 my colleagues can speak to this a little bit more
2 because they have more experience with it -- that
3 there are unique carrier cultures and practices
4 for each of these carriers that differ a lot
5 depending on their kind of business culture. Some
6 of the carriers that we deal with are let's say a
7 little more quick to want to compromise demurrage
8 terms or extend free time. Some are more rigid.
9 I would just attribute that possibly to the
10 business culture at the carrier. I was surprised
11 that some of the carriers don't have any charges
12 for some things that I kind of would expect them
13 to be charging for. So the thing that surprised
14 me I guess was the variation.

15 COMMISSIONER KHOURI: Okay. On page 24
16 where you cite a provision -- it's in the footnote
17 -- about no relief for force majeure, do you have
18 -- and I understand your methodology was basically
19 sampling, not trying to really do any statistical
20 way to look at it -- but is that a standard
21 provision that there's no relief for basic force
22 majeure or, again, is there wide variation or can

1 you even answer that?

2 MS. FENNEMAN: I think that clause --
3 you're talking about the APM Terminals clause that
4 you see at the bottom of the page?

5 COMMISSIONER KHOURI: At the bottom of
6 page 24, yes.

7 MS. FENNEMAN: Yes, sir. I believe
8 that's a pretty standard term. The way carriers
9 assess charges and implement rules -- the way
10 terminals implement rules are these days based
11 very much on the carriers' instructions. But I
12 believe the terminal operators in their -- when
13 they do publish schedules have very common terms
14 such as this, and I don't know if Gary you want
15 to -- if Gary has any impressions on that.

16 MR. KARDIAN: Yes, the demurrage charges
17 that we looked at from all the various tariffs and
18 particularly the MTOs, they get their direction
19 generally from the ocean carriers themselves. We
20 found in the Port of Los Angeles and Long Beach
21 that various terminals, within the terminal
22 itself, were either being charged by the carriers'

1 rates, by their own MTO schedule, or by the Port
2 of LA or Port of Long Beach tariff and that's
3 within the same terminal. So you can imagine how
4 difficult it was. And when we spoke to truckers,
5 they had their own problems trying to calculate.
6 As you can imagine, a board of 13 terminals in Los
7 Angeles, trying to calculate what the demurrage
8 charges would be at the individual terminals for
9 the individual carriers. It's like an NCAA
10 bracket trying to figure out what the charges are
11 going to be.

12 COMMISSIONER KHOURI: I'd rather not
13 talk about it, if you don't mind. Sore subject.
14 My team didn't get to where they were supposed to
15 be.

16 MS. FENNEMAN: But I would add to that
17 that most of the schedules and tariffs have some
18 provision for a kind of force majeure situation,
19 including longshoremen strikes, in which the cargo
20 is expected to share in the cost of that and that
21 the cargo should expect that the costs will not be
22 solely borne either by the carrier or the

1 terminal.

2 COMMISSIONER KHOURI: Moving to page 31,
3 was a clause, demurrage I believe it is again, and
4 let me just interject this that none of the
5 carriers were picked as though they were bad
6 actors.

7 MS. FENNEMAN: No, sir.

8 COMMISSIONER KHOURI: And it was solely
9 from the basis as you said of market share. But
10 in 31, it talks about rules for allowing for
11 suspension of demurrage detentions. Again, the
12 same question. Is this sort of the common
13 practice -- let me back up because I'm much more
14 experienced in bulk marine carriage than
15 containers and I'll catch up to all of your
16 expertise one of these years. But I know in the
17 bulk area that it is common practice everywhere
18 that demurrage is not relieved for force majeure.
19 I was interested to see this provision about where
20 there are places to waive it I suppose. So,
21 again, my same question. Is this common? Is it
22 across the board? Is it all over the map?

1 MS. FENNEMAN: So I only found a few of
2 these. I didn't find these in other carriers'
3 provisions. And I don't know if Gary can speak to
4 this at all, but you're exactly right,
5 Commissioner, that these provisions would give the
6 carrier the ability to waive charges, but not
7 necessarily require them to. But it does take
8 account of when the carrier somehow is at fault
9 that the cargo would not be charged. I think the
10 Maersk tariff probably says it the clearest. The
11 other ones give the carrier a little more wiggle
12 room to decide when they might waive or not.

13 COMMISSIONER KHOURI: Just reading the
14 clear words of the footnote 31 on page 31, I don't
15 know that I'd characterize it as carrier fault,
16 perhaps carrier involvement, but I don't want to
17 try to parse words.

18 But you bring up really my next
19 question. You just segued right into it. What I
20 understand you to say is you didn't find these to
21 be anywhere ubiquitous across the spectrum as you
22 do the general no force majeure relief. Because

1 that leads me to, without such a tariff or
 2 provision or MTO schedule provision, could the
 3 VOCC or the MTO retroactively decide to not
 4 collect the rate?

5 MS. FENNEMAN: Well, I think they would
 6 get themselves into a tariff adherence problem
 7 possibly, but I don't know if anyone else wants to
 8 speak to that. It was an issue that I recognized
 9 and actually comes up sometimes in conversations
 10 with CADRS that the carrier is reluctant at times
 11 to waive any charges because they have concerns
 12 about tariff adherence.

13 COMMISSIONER KHOURI: Well, we had -- if
 14 I could direct this to our -- and if I may, Mr.
 15 Chairman, our new General Counsel. Welcome, Mr.
 16 Wood. Attorney-client privileged material, 5 U.S.C. 552(b)(5)

█ [REDACTED]

█ [REDACTED]

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Attorney-client privileged material, 5 U.S.C. 552(b)(5)

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MS. FENNEMAN: May I add one thing?

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Sorry, Commissioner. Just in follow up, I think a

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lot of times the reasons collection of these fees

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is so complicated is precisely because the basic

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freight tends to be controlled by service

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contract. The terminal operator is directed by

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the vessel operator on how to collect demurrage

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and detention on imports by the vessel operator

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and these can be very -- kind of complex. There

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may be terms in the service contract that would

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affect this as well. I'm not familiar with many

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of them, but perhaps Gary, if you want to give a

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little color to how these kinds of terms and terms

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for waiver or relief might appear in service

1 contracts perhaps?

2 MR. KARDIAN: Sure. I agree with Ms.
3 Fenneman. It's the fact that very few service
4 contracts address demurrage. More often than not
5 you'll find free time detention off the terminal
6 where they address the terms in the contract. I'd
7 say in 99 percent of the contracts that we view,
8 demurrage is not addressed. It's simply per the
9 carrier's tariff or per the MTO schedule.

10 COMMISSIONER KHOURI: So 99 percent
11 would say this issue is in the public tariff
12 provision?

13 MS. FENNEMAN: Most likely.

14 COMMISSIONER KHOURI: Let me move over
15 to my other areas. The report itself says that
16 the following sections discuss different options
17 for various participants and the Commission. So,
18 again, I'm struggling with what does this report
19 -- and as I understand Commissioner Lidinsky
20 looking for some public release of this. I'd like
21 to understand what the report says before the
22 public starts going through it. But it seems to

1 suggest to me that these -- I mean it will be
2 issued as a Commission report as prepared by two
3 esteemed bureaus of the Federal Maritime
4 Commission and they're saying that these are
5 options. So which of the different options are
6 deemed to actually be viable or credible?

7 MS. FENNEMAN: Well, Commissioner, the
8 report basically was intended for the Commission
9 to explore further those potential tools that it
10 has. I get a lot of questions from the public.
11 First, what is the Commission going to do about
12 this problem? So I think there might have been
13 intent to answer that possible question. What
14 might the Commission do about this potentially?
15 But also what can the industry itself do about
16 this problem? But, again, coming back to my
17 initial remarks, it makes no recommendation for a
18 particular course of action.

19 COMMISSIONER KHOURI: Well, I understand
20 when you say that, but it comes down to what can
21 the Commission do by itself or what types of
22 actions would the Commission be receptive to and

1 would find as viable and credible actions if the
2 public was to present it.

3 Attorney-client privileged material, 5 U.S.C. 552(b)(5)

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█ [REDACTED]
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13 COMMISSIONER KHOURI: As I read and when
14 we get over to the order of investigation, it
15 makes a reference to 46 CFR Section 502.63(b), so
16 on page 40, and that section says you have to
17 specifically make reference to a provision of the
18 Shipping Act that's been violated. So, again, I'm
19 trying to understand what this informs me of. You
20 said you've had 80 cases going on and hundreds of
21 phone calls. Where are we with an order to
22 investigate a section of the Shipping Act for

1 possible violations? I'm just struggling to
2 connect those two dots, which seem to have an
3 awful lot of distance between them.

4 MS. FENNEMAN: I can respond to part of
5 that question I think. So the Consumer Affairs
6 and Dispute Resolution Services, when we get phone
7 calls, we initiate an ombuds complaint matter and
8 we treat those with alternative dispute resolution
9 standards. We try and -- we ask the parties to
10 voluntarily participate and once they do agree to
11 participate, we apply standards of neutrality,
12 voluntariness and confidentiality. So the
13 complaints that we receive where the two parties
14 are participating would not be matters that we
15 would refer for example, to the Bureau of
16 Enforcement. We do have a procedural wall and
17 substantive wall between our offices. That's not
18 to say that there might be individuals that are
19 coming to the Bureau of Enforcement and requesting
20 some sort of relief but that's not something that
21 would come from my office and go over to BOE
22 necessarily, on a particular case.

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COMMISSIONER KHOURI:

[REDACTED]

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Attorney-client privileged material, 5 U.S.C. 552(b)(5)

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1 Attorney-client privileged material, 5 U.S.C. 552(b)(5)

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19 same process, that's the-- understand, it's the

20 only point I'm trying to make here, that wouldn't

21 you not want to have a formed a professional

22 judgement that facts and law put together as found

1 under the Shipping Act, warrant us to move
2 forward. So that -- I am concerned that what the
3 report, well intentioned and et cetera as they be,
4 is that there is something well beyond a hint,
5 well beyond implication that this will be an FMC
6 document, procedurally I assume would be put up on
7 our website or however, whatever manner is
8 determined to, if it's made public et cetera, that
9 leads the public to conclude that these are all
10 viable actions that were considered to be ready,
11 ripe and otherwise judiciable. So thank you for
12 the opportunity to make some observations and
13 remarks Mr. Chairman.

14 CHAIRMAN CORDERO: Thank you.
15 Commissioner Doyle.

16 COMMISSIONER DOYLE: Thank you for this
17 report. You know, when we're doing the port
18 congestion forums and things of that nature, it
19 really, it really did come out through the
20 stakeholders, the entire supply chain, that the
21 problems were coming at that point. And you know,
22 we're back at late summer, early fall, and it got

1 worse since then. And it was in Baltimore where I
2 was doing the forums with Commissioner Lidinsky
3 that I really first heard about the problems with
4 demurrage and detention. And it wasn't something
5 that was part of the actual agenda, for these port
6 congestion forms, but you had these BCOs and even
7 the large and small, they were upset. And they
8 were upset at that point, not so much with what
9 was going on at that time, but on the east coast,
10 the amount of money that they had to pay in
11 demurrage and detention as you relate it to
12 weather from the previous winter. And the
13 negotiations that they tried to have to get the
14 bill reduced, you know, some of these amounts that
15 they paid ate up their entire profit margin for
16 the year. So when I look at this report, and the
17 way that I classified it, because I went to Port
18 Day in New York and I spoke at Port Day in New
19 York last year, the thing that comes out is, you
20 know if the trucker or the shipper is ready,
21 willing and able to pick up that cargo, right then
22 and there, and they can't, through no fault of

1 their own, but are charged exorbitant fees, they
2 don't even want free time any more, when you talk
3 to some of these folks. I want my container; I
4 want it now. I want to highlight a couple of
5 things, and it's not much, but I think you did a
6 very, very good job on this report. And I just
7 want to read a couple of things that you put
8 forward and then just discuss something afterwards
9 on what I think this report will do, or could do.

10 "The MTO congestion, the Commission had
11 noted in 2014 at certain ports, has recently
12 become even more acute. Operationally, it appears
13 that congestion begets further congestion, which
14 in turn may result in higher costs for everyone in
15 the supply chain. When MTOs are forced to stack
16 equipment higher and tighter to address terminal
17 space issues, containers may be buried in hard to
18 access stacks when a truck driver's attempting to
19 pick up a specific container. Land side
20 productivity consequently declines when a crane
21 operator has to move multiple containers in order
22 to remove the desired one. Further, truckers

1 complain that certain areas of terminals have been
2 restricted or placed off limits. This makes some
3 containers unavailable for pickup. VOCCs and MTOs
4 have limited the days and shifts during which they
5 will accept returns of empty containers. Last
6 minute notice from VOCCs and MTOs to truckers,
7 importers and exporters about vessel loading
8 delays, cancelled vessel calls, terminal opening
9 hours, shifts in closed areas, have left cargo
10 interests scrambling to pick up their cargo, load
11 their exports and return their empties. Rail
12 service providers, for example, report delays,
13 have reduced the number of trains running from the
14 west coast to mid-America, mid-west, by half."

15 I think that one page clearly identifies
16 where this is. Each of those points within the
17 terminal, relate to the carriers, vessel bunching
18 is not there, but again, we had discussed this at
19 the last meeting. I had hoped we were going to
20 have a discussion on it today, was your load port
21 -- your load plan, the vessel load plan. These
22 all are related to congestion. The shipper and

1 the trucker end up paying for it. So I am in
2 support of making this report public. And maybe
3 it does force a swifter discussion between the
4 private industry stakeholders. Carriers and the
5 marine terminal operators are going to need to
6 talk to the truckers and the shippers and the
7 chassis providers. It would be much better if
8 they can figure this thing out. And hopefully
9 when this report comes out, they take a serious
10 look at this, because we are not forcing anything
11 right now. All's we are saying in this report is,
12 is what we have found, in our findings, going
13 along in the supply chain. We're not forcing you
14 to do anything right now. But under the Shipping
15 Act, these are some things that we may be able to
16 do in the future. So figure it out. Once again,
17 excellent report -- all the staff, everybody
18 involved with this report, you did a good job.
19 Appreciate it, thank you.

20 CHAIRMAN CORDERO: Thank you,
21 Commissioner. Again, Ms. Fenneman's staff, thank
22 you for the presentation. The report does raise

1 of course, issues, as to the impact of demurrage
2 and detention practices have resulted in some
3 serious or some may say, onerous levels of charges
4 being imposed, due to congestion in our ports. I
5 want to make sure that we move this in the proper
6 context. Number one, after the issue of
7 demurrage, as many of you know, this is not a new
8 issue here for us, and by that I mean,
9 stakeholders and industry members who have brought
10 this to our attention. Let us remind ourselves
11 that just a couple years ago, this issue was
12 brought to our attention by some stakeholders who
13 believed that what they or their customers were
14 being presented with were charges that were
15 perhaps not intended. And by that I mean the
16 demurrage question with regard to, as the report
17 references, making sure that (inaudible)
18 implemented in such a way so that cargo moves
19 through terminals efficiently and so that shippers
20 don't see terminal operators as a warehouse, and
21 wherever we had moved today, in the opinion of
22 some stakeholders, was clearly whether or not

1 these charges are now being applied in a way
2 that's unfair or unreasonable or punitive in
3 nature. Since again, this question, you want to
4 make sure the demurrage is nothing that started
5 when this issue commenced with what we saw on the
6 west coast in the last year.

7 Number two, with regard to congestion
8 overall, I believe that we have done an excellent
9 job, particular staff, and as we move forward with
10 our four forums, in trying to ascertain some of
11 the concerns of stakeholders in the maritime goods
12 movement industry. And as has been referenced in
13 the report, congestion is a concern. Interesting
14 to note that in the last couple weeks, the
15 maritime reporting, or periodicals have referenced
16 congestion at other ports, as for example,
17 Virginia. In reading some of these reports, it
18 seems to be that some of the cargo that has now
19 been directed to the east coast ports, that is
20 diverted to the west coast, given the scenario
21 that has occurred there in the last six or seven
22 months, now has caused other ports to be the

1 recipients of cargo more than what they had
2 predicted to this point. The result has been some
3 form of congestion that they're experiencing. The
4 point I'm making is, as we move forward in
5 addressing this issue in years to come, there are
6 many factors that cause congestion, which I don't
7 believe leaves any gateway to be immune from the
8 possible causes and effects of congestion.

9 Accordingly, if as a Commission we could highlight
10 those issues, and also lessons learned, not only
11 will it cure or mitigate the congestion that we
12 have seen at this point, but certainly mitigate
13 the potential congestion that we may see in the
14 years going forward. Because one thing for sure,
15 what we do know, we are going to have larger
16 vessels coming to our gateways, and cargo is not
17 going to be diminished. For the economy, that's
18 very good news, keeping in mind how important
19 imports and exports are for our economy.

20 Finally, I just want to make three last
21 points with regard to what we heard this morning.
22 And once again, as I said, demurrage is not a new

1 issue that has been brought to us and I would
2 probably foresee that will be a continuing issue
3 in the minds of some in terms of how this is
4 applied. Number two, we could agree that there
5 has been a lot of questions posed, and there has
6 been some confusion by the industry and
7 stakeholders with regard to not only the questions
8 but the answers. And I believe the paper goes a
9 long way to at least answering some of those
10 questions. And by that I mean, my third point,
11 who controls the charges. So I think what we have
12 before us is at the very least an informative
13 document, as to the charges in question, the
14 intents of these charges, perhaps the unintended
15 consequences of what has occurred as a result of a
16 congestion and of course, what could be done going
17 forward, whether it by industry stakeholders
18 themselves, or from the Federal Maritime
19 Commission's perspective.

20 At the end of the day, as the report
21 makes reference, there is certainly anecdotal
22 evidence in regard to the concern of these

1 charges, be it demurrage, detention, per diem, and
2 thus, for readers of the report, if in fact there
3 is an ongoing issue with regard to what has been
4 presented in the last few months, particularly
5 with regard to demurrage, and when I say, what has
6 been presented, not just with regard to the many
7 phone calls and the cases that have been open
8 related to that, but again, if you pick up any
9 maritime periodical, this has been an issue that
10 has been front and center. So it is my hope that
11 as people who read this report, that are from
12 outside the Commission, who had questions with
13 regard to some of these issues, particularly
14 demurrage, what can we do about it-- we the
15 industry? What could the FMC do about it? I
16 think this is going to be, from what you gather
17 and the comments that have been made this morning,
18 ongoing dialog and discussion with regard to this
19 issue, and as we move forward, again, we moved
20 with our four port forums to address precisely the
21 question of congestion, the supply chain, which I
22 think this is pretty much relevant to that and as

1 we move forward with the next phases that the
2 Bureau of Trade Analysis will be addressing in
3 terms of our congestion study, I think that many
4 of these questions are very apropos and the
5 answers of course and what we do going forward is
6 again-- will be subject to further dialogue and
7 discussion. So with that, I am hopeful that we
8 have a motion which will address some of the
9 concerns that have been expressed here, which is
10 one, that we do release this document to the
11 public and that that document be placed on our web
12 site so that the stakeholders have an
13 understanding in terms of the grasp of the issues
14 as outlined in this report.

15 COMMISSIONER DOYLE: Mr. Chairman, I
16 have a motion.

17 CHAIRMAN CORDERO: Yes, Commissioner.

18 COMMISSIONER DOYLE: Mr. Chairman, I
19 would like to make a motion that the report
20 entitled "Rules, Rates, and Practices Relating to
21 the Detention, Demurrage and Free Time for
22 Containerized Imports and Exports Moving Through

1 Selected United States Ports" be released in its
2 entirety to the public.

3 CHAIRMAN CORDERO: And I second that
4 motion with the added language Commissioner that I
5 would assume that report would be placed on our
6 web site.

7 COMMISSIONER DOYLE: Effective
8 immediately.

9 MS. GREGORY: Then you have a motion
10 before you. Is there a second?

11 CHAIRMAN CORDERO: Second.

12 MS. GREGORY: The motion has been
13 seconded. Are you ready for the question?

14 COMMISSIONER KHOURI: Is there
15 discussion on the motion?

16 MS. GREGORY: If the Chairman allows.

17 CHAIRMAN CORDERO: Yes we could have
18 discussion, Commissioner Khouri.

19 COMMISSIONER KHOURI: Please go in
20 normal order if you would.

21 COMMISSIONER DYE: Oh, thank you very
22 much.

1 CHAIRMAN CORDERO: Oh, I'm sorry.
2 Commissioner Dye.

3 COMMISSIONER DYE: Although this
4 document does not make recommendations, as you
5 explained Ms. Fenneman, by releasing it without
6 further Commission consideration, we'll lead the
7 public to believe that we have made a
8 determination to support at least some of these
9 actions discussed in the document. The document
10 names carriers and terminals that have been
11 surveyed, are also giving the impression that the
12 Commission has determined that their business
13 practices are somehow suspect under the Shipping
14 Act. I'm especially concerned that the discussion
15 on this document concerning CADRS negotiations
16 with carriers on demurrage relief could seriously
17 undermine the trust and the credibility that is
18 necessary for the continuing success of our Rapid
19 Response Team's program. That program as you
20 explained is successful only on a voluntary basis
21 and to the extent that our carrier partners
22 believe that we have undermined their

1 participation in the program, it may fail to be an
2 option, especially for small shippers. The
3 challenges facing our courts and supply chain are
4 not new. Neither are they limited to U.S. ports.
5 Several of the best academic articles I've read
6 concerning maritime logistics and port congestion
7 are over ten years old. Thank you Dr. Pearson.
8 These articles explain that there is not a simple
9 amorphous port congestion that has affected
10 worldwide ports. There are interrelated systems
11 in which or around which there are created
12 bottlenecks and the complications among those
13 systems and with their antiquated, in some cases,
14 business processes are extremely complicated. I
15 don't support singling out for blame in causing
16 port congestion, any particular participant in our
17 international supply chain or port congestion
18 problems including carriers, their alliances,
19 terminals or chassis operators. At our forum in
20 the Gulf ports, we discussed the need for a
21 collaborative process representing all port
22 interests to address port congestion and port

1 productivity, not just free time, detention or
2 demurrage. I assured the participants in the Gulf
3 that I do not support government proscriptions or
4 requirements that would attempt to respond to
5 supply chain challenges, however complicated,
6 facing our ports, truckers, shippers and other
7 supply chain participants. The commercial
8 interests delivering and using port services are
9 in the best position to resolve complicated port
10 congestion challenges with new methods and
11 practices developed for today's intermodal
12 transportation system. If the Commission believed
13 that a particular Shipping Act violation has
14 occurred after receiving the advice from
15 professional staff, concerning our statutory
16 authority and factual support, we should
17 investigate that matter rather than releasing this
18 document. Thank you Mr. Chairman.

19 CHAIRMAN CORDERO: Thank you
20 Commissioner. Commissioner Lidinsky.

21 COMMISSIONER LIDINSKY: Thank you Mr.
22 Chairman. I have full faith in our constituency

1 and the public to read this report and take away
2 what they wanted to take from it, and I'm going to
3 support the motion.

4 CHAIRMAN CORDERO: Commissioner Khouri.

5 COMMISSIONER KHOURI: Thank you, Mr.
6 Chairman. Obviously I associate myself with
7 Commissioner Dye's comments. I'll return to them
8 in just a second. I want to say that my initial
9 involvement as this report begins with the forums,
10 my initial involvement with discussions, with the
11 Chairman's office, that these were to be forums to
12 provide a place where all of the stakeholders
13 could come together and share ideas, discussions,
14 and look for commercial solutions to those issues.
15 Secondly, as based on that assurance, I talked
16 with virtually all of the participants at my forum
17 and I emphasized to them that we the Commission
18 are not looking at coming into your business, or
19 any of the stakeholders, to try to regulate or
20 tell them how to do their business. Not looking at
21 regulating or bringing the hammer of the FMC down
22 to them.

1 At the Charleston forum, I had a final
2 question, interestingly, not surprisingly: So
3 where does the FMC go from here? I went back to
4 the transcript of that meeting to refresh my
5 memory as to what I stood at a podium and said to
6 a hundred industry participants -- what the
7 outcome -- what is the outcome that I'm looking
8 for and the Commission is looking for. May the
9 record reflect that I'm reading from the
10 transcript from my meeting. The Federal Maritime
11 Commission is an independent agency and I talked
12 about this very issue with Chairman Cordero before
13 I took on the assignment to do one of these
14 forums. As you mention, Commissioner Dye is doing
15 a forum next week. We will then, all five us, all
16 five Commissioners, having participated in a
17 forum, we'll put our heads together as to what
18 kind of report or action may come out of that. I
19 don't want to say, well, this or that is going to
20 happen, but because of some prior press issues
21 initially and then again before I came down here,
22 I confirmed with Chairman Cordero we are not

1 looking at doing - opening up a rulemaking of any
2 description. This is not an area we are looking
3 to regulate. Again, what I said earlier in the
4 day, the last thing you, the business public, want
5 is the government to come in and tell you how in
6 any way, shape, form, or fashion, how to run your
7 business. This is a complex issue. There are a
8 lot of inputs; there are a lot of pieces that have
9 to come together and work better, and I think we
10 had some really good dialogue today and there will
11 probably be a report of some type and we'll come
12 out with that and see if there are next steps, but
13 I'm confident I'm saying that there is not a
14 regulatory rulemaking getting ready to come out of
15 this.

16 I'm obviously troubled, seriously
17 troubled, Mr. Chairman, that notwithstanding the
18 assurances of Commissioner Lidinsky that this is a
19 report coming from the Federal Maritime Commission
20 and the public will look at all of these legal
21 options as being viable. For these reasons I will
22 not support the motion to make the report public.

1 Thank you, Mr. Chairman.

2 CHAIRMAN CORDERO: Thank you,
3 Commissioner. Commissioner Doyle.

4 COMMISSIONER DOYLE: I have no comments
5 other than I want to call for the question. Can I
6 get a second?

7 CHAIRMAN CORDERO: Second.

8 MS. GREGORY: The motion has been
9 seconded. Are you ready for the vote?

10 CHAIRMAN CORDERO: Yes.

11 MS. GREGORY: Mr. Doyle?

12 COMMISSIONER DOYLE: Aye.

13 MS. GREGORY: Commissioner Khouri?

14 COMMISSIONER KHOURI: No.

15 MS. GREGORY: Commissioner Lidinsky?

16 COMMISSIONER LIDINSKY: Aye.

17 MS. GREGORY: Commissioner Dye?

18 COMMISSIONER DYE: No.

19 MS. GREGORY: Chairman Cordero?

20 CHAIRMAN CORDERO: Aye.

21 MS. GREGORY: The ayes have it and the
22 motion has been adopted.

1 CHAIRMAN CORDERO: Okay. Now as we move
2 forward, Madame Secretary, I'll --

3 COMMISSIONER KHOURI: I would like to
4 make a motion.

5 CHAIRMAN CORDERO: Sure, Commissioner
6 Khourri.

7 COMMISSIONER KHOURI: Mr. Chairman, it
8 is my view that if we are going to make this
9 report public then I believe that this entire
10 section of this meeting -- that the transcripts
11 discussion et cetera -- in order to give full
12 explanation and full sunlight to the report should
13 likewise be made public. I so move that Item No.
14 1 be made public as soon as a transcript is
15 available. Thank you.

16 MS. GREGORY: There is a motion before
17 the Commission, is there a second?

18 COMMISSIONER DYE: I second.

19 MS. GREGORY: The motion has been
20 seconded. Are you ready for the vote?

21 CHAIRMAN CORDERO: Do we have a
22 discussion?

1 MS. GREGORY: You may have discussion if
2 you wish.

3 CHAIRMAN CORDERO: Hearing no further
4 discussion we're ready for the vote.

5 MS. GREGORY: Commissioner Doyle?

6 CHAIRMAN DOYLE: No.

7 MS. GREGORY: Commissioner Khouri?

8 COMMISSIONER KHOURI: Yes.

9 MS. GREGORY: Commissioner Lidinsky?

10 COMMISSIONER LINDINSKY: I wanted this
11 session open to begin with, so I'm going to vote
12 yes.

13 MS. GREGORY: Commissioner Dye?

14 COMMISSIONER DYE: Yes.

15 MS. GREGORY: Chairman Cordero?

16 CHAIRMAN CORDERO: No.

17 MS. GREGORY: The yays have it and the
18 motion has been adopted.

19 May I ask a question on timing?

20 Transcripts are usually received three to five
21 days after the Commission meeting. I think it may
22 be wise if we're going to release the transcript

1 as directed by the Commission that we time that
2 along with the posting of the report.

3 CHAIRMAN CORDERO: Releasing the
4 transcript?

5 MS. GREGORY: At the time that the
6 report is posted on the website.

7 CHAIRMAN CORDERO: Okay, well this
8 hasn't cleared. I thought the motion that did not
9 pass, in fact we -- what's your question to do
10 that?

11 MS. GREGORY: The first motion of
12 Commissioner Doyle was to adopt the staff's report
13 and release it --

14 CHAIRMAN CORDERO: That's correct.

15 MS. GREGORY: -- immediately, I believe,
16 and then you added to that motion -- post to the
17 website.

18 CHAIRMAN CORDERO: The report?

19 MS. GREGORY: The report.

20 CHAIRMAN CORDERO: That's correct.

21 MS. GREGORY: Well, we can --

22 Commissioner Khouri's motion was to also release

1 the transcript which also was approved by a
2 majority. So we have the staff report that the
3 Commission has approved for release and the
4 transcript.

5 CHAIRMAN CORDERO: Okay, let's backtrack
6 here. The motion, as I understand it by
7 Commissioner Khouri, was to also include releasing
8 the transcript, am I correct?

9 MS. GREGORY: Commissioner Khouri made a
10 separate motion to release the transcript.

11 COMMISSIONER KHOURI: When ready.

12 MS. GREGORY: When ready.

13 CHAIRMAN CORDERO: All right.

14 MS. GREGORY: And that will be three to
15 five days from this Commission meeting. We will
16 not receive it until then. So my question to the
17 Commission is that proceeding with the first
18 motion was to release the report immediately. It
19 would be three to five days later that we would
20 post the transcript as well. Is there an interest
21 in posting them at the same time, is my question.

22 CHAIRMAN CORDERO: Well, I think the

1 confusion here, at least on my part, there is a
2 motion that passed to release the report
3 immediately to the website.

4 MS. GREGORY: Yes, sir.

5 CHAIRMAN CORDERO: Based on that motion,
6 subsequent to the end of this meeting, the
7 conclusion, that report will be released and be
8 placed on the website, am I correct?

9 MS. GREGORY: Correct.

10 CHAIRMAN CORDERO: Your question, as I
11 understood it, was to whether or not to delay that
12 until we have the transcript. So for me the
13 motion speaks for itself. I mean, subsequent to
14 the conclusion of this meeting we will release the
15 report and it will be placed on the website.

16 MS. GREGORY: Okay, thank you, sir. I
17 just wanted to make that clarification.

18 COMMISSIONER KHOURI: Can I make a
19 further motion? I understand the Secretary's
20 concerns about not having contemporaneous release
21 of the report plus the underlying discussion on
22 the report. Would you entertain the motion please

1 that without asking to amend Commissioner Doyle's
2 motion that the release that is going to be prompt
3 according to the first motion, as you say, Mr.
4 Chairman, it speaks for itself, that that release
5 also indicates to the public that the transcript
6 surrounding this item will be released as soon as
7 possible so that they know to look for it. If
8 that's the form of a motion then so be it. Is
9 there a second? Excuse me, that's your job.

10 (Laughter)

11 COMMISSIONER DOYLE: I will second that.

12 MS. GREGORY: The additional motion to
13 indicate to the public that the transcript will be
14 released when it becomes available is the motion
15 before you. Is there a second?

16 COMMISSIONER DOYLE: Second.

17 MS. GREGORY: I'm sorry, seconded?

18 COMMISSIONER DOYLE: Yeah, and we're
19 going to go to discussion, right?

20 CHAIRMAN CORDERO: Yes, we're going to
21 go into discussion.

22 [REDACTED] Attorney-client privileged material, 5 U.S.C. 552(b)

1 Attorney-client privileged material, 5 U.S.C. 552(b)(5)

[Redacted text block containing approximately 25 lines of blacked-out content]

1 Attorney-client privileged material, 5 U.S.C. 552(b)(5)

█ [Redacted]

11 COMMISSIONER DYE: Mr. Chairman?

12 CHAIRMAN CORDERO: Yes, Commissioner.

13 COMMISSIONER DYE: I think the
14 difference here, is that when we consider matters
15 in closed session, we do not release the
16 underlying documents that were the subject of the
17 Commission's consideration. And that is why in
18 this case, since the Commission has decided to
19 open that part of the -- our consideration, that
20 it has essentially -- it has overturned the
21 reasons that we had, certainly in my mind, for the
22 reasons that we had in closing the meeting, and so

1 we will release the transcript in order to make
2 our previous release a fuller response.

3 CHAIRMAN CORDERO: Let me add one thing.
4 I'm glad we are having this dialogue. Let me add
5 another factor. As we began the meeting, we noted
6 that one Commissioner had contemplated a motion to
7 have this meeting in open session, and the
8 Commissioner, after further consideration, decided
9 not to move forward with that motion.

10 Number two, another perspective we need
11 to understand going forward, is the possible,
12 again, possible credibility of Commission
13 proceedings from the media's perspective. Now,
14 there has been an inquiry of two, one or two, or
15 more, I'm sure of Staff, I know I have had it,
16 from the news media or reporters who ask as to
17 whether this session would be an open session
18 discussion; so put your -- put yourself in the
19 position of the media, they don't show up here
20 because we said this was going to be a closed-
21 session discussion, and then after the fact, after
22 we realize nothing was said, that would violate

1 the confidentiality, we make an assessment after
2 the closed session meeting, well, let's go ahead
3 and release the transcript to the public.

4 While I recognize the well-intended
5 motion to do that, as Chairman, I have my concerns
6 of changing courses in the middle of the action,
7 so to speak, because going forward, if we have a
8 closed-session, that decision to having a closed
9 session has been contemplated, discussed, and
10 decided upon. Do we really want to go forward
11 with the understanding that in future closed
12 session matters, we are going to now have a
13 motion, after our discussion? And since
14 everything was basically okay, let's go ahead and
15 release it to the public?

16 COMMISSIONER DYE: Mr. Chairman?

17 CHAIRMAN CORDERO: I don't think that's
18 wise.

19 COMMISSIONER DYE: Mr. Chairman, I also
20 voted to close this portion of the meeting, and I
21 share your concerns, which is why I do not think
22 we should release the document that was the

1 subject of that portion of the meeting.

2 MS. GREGORY: Mr. Chairman, if I may.
3 The discussion, notwithstanding, the Commission's
4 Rules at 503.78 do permit the Commission to
5 release, subsequent to a close meeting,
6 information or decisions that are made, so the
7 Commission can determine to do that after an item
8 has been closed.

9 CHAIRMAN CORDERO: Understood, which
10 goes to Commissioner Dye's commentary. We can
11 release a document referred to in closed session,
12 in which the first motion did that. My concern is
13 regard to the discussions in closed session.

14 MS. GREGORY: It refers to the
15 Commission can, of course determine to make public
16 the events or decisions occurring in a closed
17 meeting, such information to be disseminated by --

18 CHAIRMAN CORDERO: But it doesn't say
19 transcripts.

20 MS. GREGORY: It does not, but it also
21 doesn't exclude transcripts.

22 CHAIRMAN CORDERO: I don't know. Like I

1 said, I've been -- like many of us here, whether
2 related to FMC or other Brown Act, as they call it
3 in California, or the Sunshine Act, at the Federal
4 level. And I have to say that this is the first
5 time in my experience that when we have
6 closed-session matters, let's take, for example,
7 hypothetically, let's take a question of a
8 personnel action, which are clearly closed-session
9 actions; let's say, after that personnel
10 discussion it is decided that there was nothing
11 really that is going to impede us with regard to
12 the personnel discussion, unless we entertain a
13 motion afterwards, well, let's go ahead and
14 release the transcript of what we said about the
15 personnel matter.

16 Again, I think it's a proper analogy, an
17 analogy in that, as you go forward with the
18 meeting, we all make our commentaries, and
19 discussions within the confines of a closed
20 session parameters, and I'm talking about the
21 transcript, and I will say this, there is nothing
22 that, at least I'm speaking for myself, that I

1 think I have a concern about disclosing to the
2 public, I'm talking about the process as we go
3 forward.

4 I think it's a bad precedent that
5 subsequent to making the decision to hold an item
6 in closed session, we then change course by
7 releasing the transcript, because I think what
8 that's going to do, if I'm a Commissioner, and
9 let's face it, one of things that we decided to
10 have in closed session regarding commentaries, is
11 some of the discussions that are sensitive in
12 commentary, and observations.

13 Query whether or not you are going to
14 disrupt that. So that's my concern about
15 releasing transcripts after a closed-session
16 proceeding, which, as the Secretary has noted,
17 it's not enumerated in the Section she just read
18 but -- and perhaps there is a reason for that.

19 COMMISSIONER DYE: Mr. Chairman, I would
20 just add once more, the Commission, in my
21 experience, does not release underlying documents
22 that are considered in closed session as well.

1 And that decision by the Commission has caused a
2 different result in this case. I agree with you,
3 that I am concerned about it, and I wish that the
4 Commission had not voted to release this
5 underlying document for a lot of reasons,
6 including the one that we considered it in a
7 closed session. Thank you.

8 CHAIRMAN CORDERO: All right.

9 COMMISSIONER KHOURI: If I may add one
10 other comment with the --

11 COMMISSIONER DOYLE: One of these times,
12 I'm going to -- you know, I want to speak in here,
13 too, you know.

14 CHAIRMAN CORDERO: Okay.

15 COMMISSIONER DOYLE: All right.

16 CHAIRMAN CORDERO: Commissioner Khouri?
17 Then I'll recognize Commissioner Doyle.

18 COMMISSIONER KHOURI: With the highest
19 respect, Mr. Chairman, I have a question as to
20 whether the analogy to a personnel action would be
21 apt to try to convert that into something that
22 might be more on point into -- incorporated into

1 Commissioner Dye's perspective. If there was
2 discussion about a personnel action, that ended up
3 in a report of discipline or some such matter, and
4 that the report was then voted to be public, but
5 the discussion by the various Commissioners as to
6 why they supported or didn't support that report
7 of discipline be kept private, it's one versus the
8 other.

9 In my judgment I understand your point,
10 and I am aware of the levels of concern, however,
11 this was brought to my vote, initially, and like
12 Commissioner Dye, I voted for closed session on
13 the recommendation of the General Counsel's
14 Office, that there was potential for some issues
15 to come up.

16 My point here is, when we then vote, as
17 Commissioner Dye said, to release the report
18 itself, and secondly, that no issues were
19 discussed in my view that should be continued to
20 be immune to the availability of the general
21 public. The press is a different issue, but so
22 that the purpose as you expressed them of

1 stakeholders and others to say, this -- these are
2 things that the Commission could look at, that
3 they have a fuller view of the potential for
4 success of pursuing any of those.

5 That was part of the discussion, and I
6 think it is an important adjunct to the report
7 itself. So I don't see this as a huge precedent,
8 I see this as something confined to the facts of
9 this particular Commission item, no more, no less.
10 Thank you for the opportunity to comment, Mr.
11 Chairman.

12 CHAIRMAN CORDERO: Thank you,
13 Commissioner. Commissioner Doyle.

14 COMMISSIONER DOYLE: Thank you,
15 Chairman. So, what we have going on here today,
16 is that the public was notified of the Commission
17 Meeting, several days ago. Two closed session
18 items. Ten minutes before I walked in here,
19 Agenda Item Number 2, discussion on congestion at
20 U.S. ports and major carrier alliances presented
21 by Commissioner Khouri was cancelled. I didn't
22 vote on that agenda item.

1 But the public, even though this is a
2 closed session, thinks that we are having a
3 discussion in here on two items today; the
4 demurrage report, the major carrier alliances by
5 Commissioner Michael Khouri. I voted to have the
6 demurrage, detention item open when the vote sheet
7 came around -- have an open meeting. I lost that
8 vote.

9 I came in here prepared for a closed
10 session. On the vote for having a closed session
11 on Commissioner Michael Khouri's discussion on
12 congestion at U.S. ports and major carrier lines
13 as presented by him, I asked his office, does he
14 really want that closed? The answer that I get
15 back was, yes. So out of deference, I voted to
16 keep that one closed.

17 Now we've had a full and robust debate
18 and discussion on a closed item, and I do share
19 the Chairman's concern. In moving forward anyone
20 can make a motion if it's a closed-session item,
21 based on what they hear that day. Get three
22 votes, transcript is out. I didn't say anything

1 here that I regret, not one bit. Anything I said,
2 I'm fine with it, but there is a precedent here on
3 this that will be set.

4 Quite frankly, I think every meeting
5 should be open to the public. There should have
6 been people in here in this room today from the
7 shipping public, the media, or anybody else who
8 wanted to be here, to watch that entire debate
9 that we had, and they didn't have that
10 opportunity. Thank you, Chairman.

11 CHAIRMAN CORDERO: Okay. Having --

12 COMMISSIONER KHOURI: My response to --
13 A point of order here. My response to
14 Commissioner Doyle's Counsel to me personally, was
15 not no, my response was, "that was what the
16 lawyers suggested," and Commissioner Doyle's
17 Counsel took that out of -- and it was in the
18 witness of my Counsel. Thank you very much.

19 CHAIRMAN CORDERO: Okay. We've heard
20 commentary on this issue, and at the end of the
21 day my view is this. As I stated, I was aware
22 that one Commissioner wanted to have this

1 discussion in open session, after listening to the
2 pros and cons of that question, as Chairman I
3 decided it would be best to have this in closed
4 session for the reasons that were given at the
5 time.

6 Accordingly, I do not want to change the
7 course of that, for the reasons I stated. I think
8 that going forward, again, I agree that as much as
9 possible we should have open sessions to be fully
10 transparent to the public.

11 So the decision was made to have this
12 particular item in closed session, and I believe
13 that given that was the vote, and that was
14 certainly my position in swaying any
15 contemplation, debate or motion as to whether or
16 not we were going to have this an open session, I
17 need to stand by that decision. And accordingly,
18 I would ask that we not release the transcripts on
19 this closed session discussion.

20 MS. GREGORY: Excuse me, Mr. Chairman.
21 Are you considering or reconsidering the previous
22 motion on the transcript. Is that what I'm

1 hearing?

2 CHAIRMAN CORDERO: No. No. No. There
3 has been no --

4 MS. GREGORY: Is that the response?

5 CHAIRMAN CORDERO: No. No. Let's go
6 backtrack. The motion as originally posed, died.
7 Three nos, two yeses.

8 MS. GREGORY: On the transcript, Sir?

9 CHAIRMAN CORDERO: On the transcript.

10 MS. GREGORY: On the transcript we have
11 Commissioner Doyle, no; Commissioner Khouri, yes;
12 Lidinsky, yes; Commissioner Dye, yes; and you,
13 Sir, no. So, the motion to release the transcript
14 did carry.

15 CHAIRMAN CORDERO: Was this the one
16 Commissioner Doyle seconded?

17 COMMISSIONER DOYLE: No. But you -- I
18 was just going to ask that question. So, we took
19 a vote, okay, and then Commissioner Khouri said he
20 would like, you know, without referencing, and my
21 no, was based on the fact that I want this report
22 out now. Okay. Then we had a discussion on,

1 okay, is the holdup -- is this report going to be
2 now held up because we've got to wait for the
3 transcript, which I'm not in favor of.

4 CHAIRMAN CORDERO: And that is --

5 COMMISSIONER DOYLE: Then I seconded
6 Commissioner Khouri's -- he revised it and said
7 that --

8 CHAIRMAN CORDERO: And that's where we
9 left off. The first motion was to release the
10 report.

11 MS. GREGORY: Yes, Sir.

12 CHAIRMAN CORDERO: That's the one you've
13 referenced in the --

14 MS. GREGORY: In that, the majority of
15 the Commission agreed to do that. Commissioner
16 Doyle voted yes, Commissioner Khouri voted no --

17 CHAIRMAN CORDERO: To release the
18 report.

19 MS. GREGORY: -- to release the report
20 as soon as possible, immediately.

21 CHAIRMAN CORDERO: Right.

22 MS. GREGORY: And then release --

1 CHAIRMAN CORDERO: And then there was a
2 second motion of which Commissioner Doyle
3 initially seconded --

4 COMMISSIONER DOYLE: No.

5 MS. GREGORY: Actually, Mr. Chairman,
6 you added to Commissioner Doyle's motion to also
7 post the report on the website.

8 CHAIRMAN CORDERO: On the website. But
9 I'm talking about the specific motion that was
10 made subsequent to all that after the transcripts.

11 MS. GREGORY: Yes, Sir.

12 CHAIRMAN CORDERO: And at that point
13 this discussion took place.

14 MS. GREGORY: Subsequent to the vote.
15 The Commission did vote on Commissioner Khouri's
16 motion to release the transcript, Commissioner
17 Doyle seconded, I believe.

18 COMMISSIONER DOYLE: No.

19 MS. GREGORY: I'm sorry.

20 COMMISSIONER DOYLE: No. He made a
21 motion --

22 MS. GREGORY: Commissioner Dye, sorry.

1 So there were two motions. The first motion was
2 to release the report and post it to the website.

3 CHAIRMAN CORDERO: That's correct.

4 MS. GREGORY: The second motion was to
5 also release the Commission's transcript.

6 COMMISSIONER KHOURI: I think to be
7 hyper-correct --

8 MS. GREGORY: On this agenda item.

9 COMMISSIONER KHOURI: The first motion
10 was Commissioner Doyle's motion, and the Chairman
11 asked to amend that motion so that it would be
12 released immediately. That was the motion that we
13 voted on, number one. Number two, was the motion
14 that I made and was seconded to make the
15 transcript public. That was item number two.
16 Then the Secretary asked a question --

17 MS. GREGORY: A clarifying question.

18 COMMISSIONER KHOURI: -- question, and
19 to resolve that question, I made a separate third
20 motion.

21 MS. GREGORY: Which is still on the
22 table.

1 COMMISSIONER KHOURI: No. I thought
2 there was a vote on that.

3 MS. GREGORY: I did not -- we have a
4 second, but then there was discussion that ensued,
5 so there has not been a vote on the third motion
6 which was to give the public notice when posting
7 report on website immediately that the transcript
8 will be forthcoming. Commissioner Doyle seconded
9 that.

10 COMMISSIONER DOYLE: Correct.

11 MS. GREGORY: Then discussion ensued
12 about releasing of transcripts and closure of
13 meeting.

14 COMMISSIONER KHOURI: Yes, that's
15 correct. You are correct. Thank you.

16 [REDACTED]

[REDACTED] Deliberative process privileged material, 5 U.S.C. 552(b)(5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ Deliberative process privileged material, 5 U.S.C. 552(b)(5)

■ [Redacted]

20 COMMISSIONER KHOURI: I call the
21 question.

22 COMMISSIONER DOYLE: I've got one final

1 clarity if Commissioner Khouri would give
2 deference.

3 COMMISSIONER KHOURI: Sure.

4 COMMISSIONER DOYLE: We've got three
5 votes here, right? So, we voted to release the
6 report immediately.

7 MS. GREGORY: Yes.

8 COMMISSIONER DOYLE: The transcript will
9 be released. What we're voting on now in the call
10 of question is notifying in the report that a
11 transcript will be forthcoming.

12 MS. GREGORY: Yes, I --

13 COMMISSIONER DOYLE: That is the call --
14 that's the question, right?

15 MS. GREGORY: Would you like me to
16 repeat what I believe -- the third and last
17 motion?

18 COMMISSIONER DOYLE: That would be
19 great.

20 MS. GREGORY: The motion is to give
21 public notice, when posting the report to the
22 Website immediately, that the transcript will be

1 forthcoming. The motion has been seconded by
2 Commissioner Doyle. Are you ready --

3 COMMISSIONER DOYLE: Aye.

4 MS. GREGORY: -- for the vote?

5 COMMISSIONER DOYLE: Aye. (Laughter)

6 MS. GREGORY: Commissioner Khouri.

7 COMMISSIONER KHOURI: Aye.

8 MS. GREGORY: Commissioner Lidinsky.

9 COMMISSIONER LIDINSKY: Aye.

10 MS. GREGORY: Commissioner Dye.

11 COMMISSIONER DYE: Aye.

12 MS. GREGORY: Chairman Cordero.

13 CHAIRMAN CORDERO: Aye.

14 MS. GREGORY: Thank you.

15 CHAIRMAN CORDERO: Okay. Now, we did
16 have the second matter of -- and I'll defer to
17 you, Madam Secretary, regarding --

18 MS. GREGORY: Yes, Mr. Chairman.

19 Commissioner Khouri, having requested this item be
20 placed on the agenda has decided to withdraw this
21 item for today's discussion. There are no other
22 matters on your agenda today.

1 CHAIRMAN CORDERO: Okay. Well, we've
2 had a nice meeting, some robust discussion, and
3 education -- at least speaking for myself. So,
4 with that, let's go forward. Thank you so much.
5 And this meeting now is adjourned.

6 (Whereupon, at 11:37 a.m., the
7 CLOSED SESSION was adjourned.)

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CERTIFICATE OF NOTARY PUBLIC
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I, Carleton J. Anderson, III, notary public in and for the District of Columbia, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

(Signature and Seal on File)

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My Commission Expires: March 31, 2017