

(S E R V E D)
(August 30, 1988)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[DOCKET NO. 88-22]

PUGET SOUND TUG & BARGE COMPANY -- EXEMPTION

AGENCY: Federal Maritime Commission

ACTION: Final Rule

SUMMARY: This Final Rule exempts Puget Sound Tug & Barge Company from the tariff filing requirements of section 18(a) of the Shipping Act, 1916, and sections 2 and 3 of the Intercoastal Shipping Act, 1933, and the rules of 46 CFR Part 550 for the transportation of general cargo in non-self-propelled barges from Seattle, Washington, to the vicinity of Kivalina, Alaska, during 1988 and 1989.

EFFECTIVE DATE: This amendment to Part 550 is effective upon the date of publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director
Bureau of Domestic Regulation
Federal Maritime Commission
1100 L Street, N.W.
Washington, D.C. 20573
(202) 523-5796

SUPPLEMENTARY INFORMATION:

Puget Sound Tug & Barge Company ("Puget") has filed an application for an exemption pursuant to section 35 of the Shipping Act, 1916, 46 U.S.C. app. 833(a) ("1916 Act") from the tariff filing and rate regulatory requirements of certain sections of the 1916 Act and the Intercoastal Shipping Act, 1933,

("1933 Act") for transportation by Puget during 1988 and 1989 of general cargo from Seattle, Washington, to the vicinity of Kivalina, Alaska. Specifically, Puget requested exemption from the tariff filing and rate regulatory requirements of sections 2, 3, and 4 of the 1933 Act, 46 U.S.C. app. 844, 845, and 845a, and sections 16, 17, and 18 of the 1916 Act, 46 U.S.C. app. 815, 816, and 817, for all transportation service performed by Puget during 1988 and 1989 for the carriage of general cargo in non-self-propelled barges in tow of towing vessels on approximately six one-way voyages annually from Seattle, Washington to the coast of Alaska above the Arctic Circle at a point near the village of Kivalina, via the Gulf of Alaska, the Bering Sea, and the Chukchi Sea.

The Commission published Notice of Filing of the Puget application in the Federal Register (53 FR 16587) and requested comments thereon from interested persons. No protests or comments were received in response to the Commission's Notice of Filing.

After consideration of the Puget application, the Commission has determined to grant, in part, the exemption sought by Puget. The facts of Puget's proposed service demonstrate that the operation will present few of the compliance issues usually associated with regular "liner" services in more competitive trade environments. Puget will be discharging cargo at a mining site rather than at a commercial port and will serve only shippers associated with the mining project. Rates will be

individually negotiated to take into account the unique needs of those involved in the mining operation. Accordingly, the Commission finds that the exemption from the tariff filing requirements and related rate level regulations of sections 2 and 3 of the 1933 Act and section 18(a) of the 1916 Act is warranted for Puget's proposed service during the 1988 and 1989 shipping seasons.

The Commission does not find, however, that Puget should be granted an exemption from the various proscriptions of sections 16 and 17 of the 1916 Act. The paucity of practical transportation alternatives to the mine site appears to warrant some measure of continued regulatory oversight by the Commission as to Puget's dealings with the mine project subcontractors or other potential shippers to the Alaskan site. Puget has not, in the Commission's view, presented any evidence or argument which would warrant an exemption from the specific proscriptions of sections 16 First and 17. The Commission, therefore, finds that exemption from the tariff filing requirements fulfills the basic thrust of Puget's application, without need or compelling reason to extend additional exemption authority.

In accordance with section 35 of the Shipping Act, 1916, the Commission finds that the exemption granted herein will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce.

The Federal Maritime Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order

12291 dated February 17, 1981, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- (3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, or small governmental jurisdictions.

The Federal Maritime Commission has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no environmental assessment or environmental impact statement was prepared.

List of Subjects in 46 CFR Part 550:

Maritime carriers, Rates and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; sections 18(a), 35, and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a, and 841a; and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844; the Federal Maritime Commission amends Part 550 of Title 46 of the Code of Federal Regulations as follows:

PART 550 - [AMENDED]

1. The authority citation for Part 550 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b and 847.

2. In §550.1 add a new paragraph (i) to read as follows:

§ 550.1 Exemptions.

* * * * *

- (i) Transportation by Puget Sound Tug & Barge Company of general cargo in non-self-propelled barges from Seattle, Washington, to the vicinity of Kivalina, Alaska, during 1988 and 1989.

By the Commission.

Joseph C. Polking
Joseph C. Polking
Secretary