



November 24, 2008

P2-08

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Mrs. Karen V. Gregory
Secretary
Federal Maritime Commission
800 North Capitol St. NW
Washington, D.C. 20573

RE: Agreement Number 201199. Comments of Swift Transportation Company and Knight Transportation, Inc. on MTO Agreement and request to allow the Agreement to become immediately effective as provided for in the agency's rules and regulations.

Dear Madam Secretary:

These comments in support of the above cited MTO Agreement filed with the Federal Maritime Commission by the Cities of Los Angeles and Long Beach, their respective ports, PortCheck LLC, and various Marine Terminal Operators and asking that the FMC allow the Agreement to become immediately effective are filed by the undersigned on behalf of Swift Transportation Company and Knight Transportation Inc. (hereafter, "Motor Carriers").

Swift Transportation Co. is a truckload motor carrier with 37 major terminals in 26 states and Mexico. Knight Transportation Inc. is publicly traded on the New York Stock Exchange and operates as a truckload motor carrier with 35 service centers throughout

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the United States. Both carriers have signed concession agreements with the ports of Los Angeles and Long Beach and are based in the State of Arizona.

On November 13, 2008 the FMC published notice in the Federal Register of the filing of Agreement No. 201199, Port Fee Services Agreement, between the Cities of Los Angeles and Long Beach, their respective ports, PortCheck LLC, and various Marine Terminal Operators (hereafter "MTO Agreement"). The stated purpose of the MTO Agreement was to set forth the terms under which the MTOs and PortCheck would collect the fees related to the Ports' Clean Truck Programs, determine access to the ports' terminal facilities based on information provided by the Ports, and related activities such as the MTOs' access to the Drayage Truck Registry. Motor Carriers have been informed by the Ports that the FMC staff has elected to reclassify Agreement Number 20199 from immediately effective, as requested and as provided for as standard practice according to the Commission's regulations governing the filing of such an agreement, 46 CFR § 535.308(e), to a 45 day review status. The unexpected and unjustified delay in the implementation of the Agreement will result in the delay of the collection of the Clean Truck Fee. This delay will cause significant harm to our client Motor Carriers as well as many other motor carriers which have acted as good citizens and in good faith in committing themselves to the Clean Truck Programs. Motor Carriers have made a significant investment in money and operational modifications with the expectation that the Programs would be in effect October 1, 2008. We urge the

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Commissioners to reconsider this staff decision and to allow the fee collection process to commence immediately.

No explanation has been offered by the Commission's staff for its decision to delay implementation of the Agreement for 45 days. The Staff's decision to impose the delay appears arbitrary and capricious and creates an inequitable situation for the motor carriers, such as Swift and Knight, who in reliance upon the Commission's prior approval of the Port tariffs containing the Clean Truck Programs invested tens of millions of dollars in equipment, operational improvements, and additional staff to participate in the concession agreements. The Commissioners should not allow such administrative abuse to continue. The public has a right to act in reliance upon the actions of the Commission and the Commission should not retroactively make a decision which will jeopardize these investments and the many jobs related to the investments of these companies. If the Commission believes that aspects of these Programs need fine tuned, the Commission should do so without jeopardizing the investment and jobs of innocent companies that have relied upon the agency's prior actions. As discussed below, the implementation of the fee collections by the vendor and MTOs has no relationship to the portions of the Programs being questioned by the FMC and others and should not be delayed.

Swift and Knight have expended substantial financial resources to acquire US EPA 2007 compliant trucks and make other investments and operational improvements to participate in the Clean Truck Programs. Swift has purchased 500 new compliant

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trucks at a cost of \$50,000,000 and Knight has purchased approximately 250 US EPA 2007 compliant trucks at a cost of \$25,000,000. All of these trucks have been delivered to Motor Carriers and are awaiting the opportunity to begin operations at the ports. Swift has on order another 100 US EPA 2007 compliant trucks and Knight another 50 at a respective cost of \$10,000,000 and \$5,000,000. These US EPA 2007 compliant trucks will be delivered to Motor Carriers by the end of this year for use in drayage services at the Los Angeles/Long Beach ports. Both carriers have spent 100s of thousands of dollars improving and upgrading their respective terminals serving the ports in preparation for the implementation of the Clean Truck Programs. Further, the Motor Carriers are incurring incremental payroll costs of close to \$50,000.00 per week to drivers that have not been able to obtain a full day of productive work due to the delay in the implementation of the Programs. Swift and Knight alone have incurred a total investment cost of over \$90,000,000 and operational costs of over \$2,000,000 in preparation for the ports' Clean Truck Programs. These costs continue to mount while FMC delays the implementation of the fee portion of the Programs.

Not only are these investments at risk but absent quick action by the Commission to allow the Agreement to become effective and the fees to be collected, many high quality jobs at these companies and other trucking companies will be lost as a result.

The collection regime is essential for Swift, Knight and other committed motor carriers in recouping these investments, which directly contribute to improving air emissions. The collection process must be allowed to take place so that there is a fee

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structure that provides incentives for the use of the US EPA 2007 compliant trucks which will enable Swift and Knight as well as other participating motor carriers to recover the equipment, operational and staff investments that they have incurred to support the Clean Truck Programs.

The trucking industry has suffered greatly as a result of the recession. Neither Swift or Knight or the dozens of other motor carriers that have made significant investments in anticipation of participating in the Clean Truck Programs can endure incurring such operational and investment costs at this time without an opportunity to recoup their investments and expenses. The immediate implementation of the collection process is critical to the economic well being of many trucking companies.

We know that aspects of the Clean Truck Programs are being reviewed closely by the FMC and have been challenged by the FMC and other interests in various courts. We understand that certain aspects of the Port's Clean Truck Programs have raised questions at the Commission and elsewhere with respect to §10 of the Shipping Act and other provisions of the federal law. However, the MTO Agreement under review in this proceeding does not involve the issues which have raised such concerns. Allowing the MTO Agreement to become effective immediately should not and will not affect the out come of the FMC's or court review of the ports' Clean Truck Programs. The FMC staff's decision not to allow the MTO Agreement to become effective immediately is even more puzzling and arbitrary in light of indications from the Commission that the fee collection is not an area of concern.

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The fee collection has no relationship to the issue as to whether the motor carriers serving the ports utilize employee or independent contractors to operate their vehicles. The fee collection has no relationship as to where the motor carriers serving the ports park their trucks. The fee collection has no direct relationship as to which carriers are eligible to receive incentives from the ports. We are concerned that without the fee collection no motor carrier can receive an incentive to take the actions necessary to improve the quality of air in the port areas or recoup their investments. Further, the proposed collection of the fees by the MTOs has no bearing and will not be affected by whether aspects of the Programs are preempted pursuant to section 14501 (c) of Title 49 U.S.C. Even if the alleged discriminatory portions of the Programs are revised, the fee collection by the MTOs will be an essential aspect of the remaining parts of the Programs.

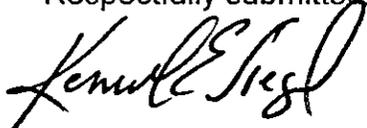
Regardless of how the employee/independent contractor issue, parking issue and other issues of concern to the Commission are finally resolved, the Clean Truck Tariff is not in dispute and should be implemented immediately. As leading representatives of the trucking community, we therefore respectfully urge that the FMC act expediently to allow MTO Agreement No. 201199 to become effective immediately as planned by its signatories and expected by the hundreds of motor carriers that have invested in the Clean Truck Programs. Any action otherwise will put over 100 trucking companies simply trying to be environmentally responsible and support the ports' efforts

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to clean the air in Southern California at a financial disadvantage and could threaten their financial stability.

Respectfully submitted,



Kenneth Siegel

Counsel for:

Swift Transportation Company
Knight Transportation, Inc.