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Dart Maritime Service, Inc.

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Karen V. Gregory
Secretary
Federal Maritime Commission
800 North Capitol St., N.W.
Room 1046
Washington, DC 20573-0001

Re: Comments in response to Docket No. 10-03 NVOCC Negotiated Rate Arrangements

My name is Willie Jefferson and I am President of Dart Maritime Service, Inc., a registered tariff publisher. I certify that I have read the following and it is true and correct to the best of my knowledge, information and belief. While Dart Maritime Service takes no formal position on the approval of the NPRM in Docket No. 10-03, I would like to offer the following comments in regard to some of the proposed provisions.

§532.5 – Requirements for NVOCC Negotiated Rate Arrangements

Section (b) states NRA must be agreed upon by shipper and NVOCC prior to the date received by the common carrier or its agent. Documentation or proof of the "acceptance" may be difficult, if not impossible to certify in some cases if a dispute of the terms of the NRA actually arise. What methods or instruments properly serve as acceptance by a shipper? Many of our NVOCC clients have free, generic email addresses at domains such as Google and Yahoo shared by multiple employees in an office. Does a simple response of "yes" in the reply of an email based NRA offer qualify as "acceptance"? Is "proof of authority" to be bound by the terms of the NRA required? Could any office staff accept an offer only to have the shipper later dispute or deny the authority of the person accepting the NRA offer after the cargo has shipped and refuse to pay the negotiated rate? Can a shipper be held to an agreement simply by a reply to an email from an unknown employee with a generic mailbox account? Requiring "agreement" by both parties without some level of proof of identity from authorizing party of shipper opens the door to potential abuse. Title 46 CFR 531.6(b)(9) covering NVOCC Service Arrangements adequately and properly deals with this issue by requiring the names and titles of the person accepting the arrangement. The same requirement could easily be extended NRAs with no additional economic impact on the NVOCC industry.

Presently NSAs, which are functionally no different from the proposed NRAs, are filed with the Commission at no cost. NRAs should have the same documentation and filing requirements as NSAs, but without the restrictions of minimum volumes, service commitments, liquidated damages or essential terms publications. This would allow for a uniform approach to the structure and content of NRAs, allow access by FMC staff when required, assign a unique number to each NRA and stored by FMC assigned organization numbers.

Dart Maritime Service, Inc. P.O. Box 480655 Charlotte, NC 28269
www.dartmaritime.com – 704-837-7950 (p) – 704-631-4667 (f) – info@dartmaritime.com (e)

- In review of earlier comments to the NPRM, costs and ease of use were cited as reasons for NRAs and shipper reluctance to be bound by terms and conditions as justification for not using the available instrument of the NSA. It is interesting to note that arguments are made against the use of the NSA by the NVOCC community when at the same time proponents of the NPRM promote its "cousin", the VOCC offered Service Contracts as a reason and example why tariff publications are no longer needed or required. Why is it acceptable for estimates of 90% of cargo moving via Service Contracts to be a proof of regulatory relief from tariff publishing requirements for NVOCCs when the almost exact same instrument, namely the NVOCC NSA, is denounced as being too restrictive? Surely the method being used by most of the VOCC segment of the industry to cover cargo movement, namely Service Contracts, is an acceptable form of rate agreement for Shippers and NVOCCs utilizing vessel operator services. Why doesn't the same logic apply to NVOCCs and their shipping clients, when in some cases shippers utilize both VOCCs and NVOCCs for similar services, depending on pricing and convenience?

I propose that §532.5 be amended to include the requirements of §531.6(a) and some of the requirements of (b) (see 1,2,3,6,8 and 9) and that NRAs state the name, title, company name, address and contact information of authorizing shipper and be filed with the Commission in its free Servcon system as presently required for VOCC Service contracts and NVOCC Service Arrangements. Agents can be used to fulfill the requirements if desired, but NVOCCs can directly file with the Commission at no expense, as is presently the case for NVOCC NSAs. Adding this requirement would add no additional burden, would add no costs, would in most cases reduce filing costs, satisfy Commission oversight requirements and can be readily and immediately accessed by a PC, internet connection and Word Processing software, common tools for doing business in the 21st century.

§532.7 – Recordkeeping and Audit

While addressing the environment if the NPRM should be adopted, this section ignores the requirements of 520.10(a). I would argue that over 95% of all NVOCC tariff data is being stored with 3rd party agents. If the NPRM should pass without the continued requirements of 520.10(a), this data may cease to become available in a short period of time. Hundreds of thousands of dollars have been spent since the adoption of the Ocean Shipping Reform Act of 1998 to ensure the integrity and availability of historical data to the FMC and the general shipping industry. The investment would be lost if 532.7 is not amended to require historical data under the existing regulatory environment be maintained for at least 5 years from the implementation of Part 532, if adopted. The Commission will still need access to this information and is bound to continue to act as an arbiter under 46 U.S.C. §41305 covering Reparations and the 3 year statute of limitations covering overcharge claims in §41308(b). By removing or not addressing this requirement, the elimination of almost all existing tariff data, if the NPRM is adopted, is a strong possibility.

General Rate Increases

General Rate Increases or GRIs have been and continue to be common practice for "across-the-board" seasonal rate adjustments and a method for NVOCCs to respond to VOCC published GRIs and market price adjustments. Common practice for tariff publishers has been to publish a notice of GRI in the rules or surcharge section of the tariff, then implement after its effective date by a "roll-in" of the adjustment into the published rates within 90 days after the GRI has gone into effect. Two or more GRIs were not allowed to go into effect on the same trade and cargo and the shipping public could be assured the published rate (whether through "roll-in" or bottom-line rate calculation) included or was subject to

- additional charges from a GRI. If the NPRM is adopted, how will this be incorporated? While publication of the GRI in a Rules tariff could be used, how would existing NRAs for repeat shipments be affected? Since 532.5 does not require a "date" to be included in the documentation of the NRA, how can GRIs which may go into effect "post-receipt" of cargo moving under an existing NRA be incorporated?

The provisions of §532.5(d) do not allow modification of the NRA after shipment is received by carrier or its agent. What happens when the NVOCC must implement a GRI in response to one or more rate adjustments implemented by VOCCs whose service they depend on? Will a new NRA be issued to include the GRI to each and every customer for repeat shipments, assuming the "rate" of the original NRA does not change and no new NRA is required? Can the NVOCC publish such a provision in the Rules tariff without ever reflecting actual charges in a NRA? Will statements like "subject to published GRI" be acceptable? Does that place an unnecessary burden on the shipper to "find" whatever extra charges may exist in a Rules tariff, even if access is provided free of charge?

I propose §532.5(c) be amended to require a statement to the effect of any existing GRIs, notice of where publication can be found if not included within the NRA and for §532.5(d) to be amended to require modification, proof of distribution and shipper acceptance of new rate levels as affected by any GRI published in a Rules tariff or included in any rules provision distributed to shipper for each and every NRA in effect for repeating shipments. New NRAs would be excluded as the correct rate level would obviously be included as long as a statement is included regarding the level and application of all GRIs, accessorials and surcharges in effect.

Dart Maritime Service, Inc. P.O. Box 480655 Charlotte, NC 28269
www.dartmaritime.com – 704-837-7950 (p) – 704-631-4667 (f) – info@dartmaritime.com (e)