



Comments of

Maher Terminals LLC

Submitted to the

Federal Maritime Commission

In the Matter of

Demurrage and Detention Billing Requirements

Docket No. 22-04

April 14, 2022

Maher Terminals LLC (“Maher”) files these comments in response to the Advance Notice of Proposed Rulemaking published by the Federal Maritime Commission (the “FMC” or the “Commission”) in the above-captioned proceeding, 87 Fed. Reg. 8506 (February 15, 2022) (the “ANPRM”).

INTRODUCTION

Maher is a marine terminal operator within the meaning of 46 U.S.C. § 40102(15) (“MTO”), which operates the largest common-user marine terminal facility (the “Terminal”) in The Port of New York and New Jersey (the “Port”) pursuant to a long term ground lease from The Port Authority of New York and New Jersey. Maher has been in the stevedoring and marine terminal business at the same location for over 50 years. Its contract customers largely consist of ocean common carriers, within the meaning of 46 U.S.C. § 40102(18), and their respective vessel sharing partners and alliances. Maher maintains private terminal services agreements with its ocean common carrier customers, which agreements constitute “marine terminal services agreements” under 46 C.F.R. § 539.309 and, as such, are wholly exempt from filing with the Commission.

In addition, and in compliance with the regulatory requirements in 46 C.F.R. § 525.2, Maher has adopted its Marine Terminal Schedule No. 010599, which is published and made available to the public on its website, and is regularly updated (the “Maher Schedules”). The Maher Schedules contain detailed provisions governing the application of free time and demurrage at the Terminal. Since May 2020, Maher has conformed, implemented and consistently applied these provisions in accordance with the Commission’s adoption of the Incentive Principal.¹

Maher does not charge detention and never has.

Maher is not a member of any terminal conference or a member of the Uniform Intermodal Interchange Agreement.

A. SCOPE OF ANPRM

1. FMC Question No. 1. Should the Commission include both VOCCs and NVOCCs in a proposed regulation on demurrage and detention billing?

1. Maher Response to FMC Question No. 1. Maher has no position in response to this question as the specific billing practices of VOCCs and NVOCCs are without the actual knowledge of Maher.

2. FMC Question No. 2. Should the Commission include MTOs in a proposed demurrage billing regulation?

2. Maher Response to FMC Question No. 2. No. Maher believes that the Shipping Act of 1984, as amended (the “Shipping Act”), and the Commission’s regulations thereunder, particularly 46 U.S.C. § 41102(c) and 46 C.F.R. §§ 545.4 and 545.5, provide a sufficient and flexible legal framework for determining the reasonableness of MTO demurrage billing practices. New or

¹ Federal Maritime Commission, *Interpretive Rule on Demurrage and Detention under the Shipping Act*, Docket 19-05, 85 F.R. 29638 (May 18, 2020) (the “Interpretive Rule”). See 46 C.F.R. § 545.5.

different regulations which create uniform requirements across the diverse spectrum of ports and MTOs (having diverse operating systems) are simply unnecessary. Maher has not received any feedback from its carrier customers and other Terminal users that its free time and demurrage policies and practices are unclear or confusing, or that further regulations are necessary to improve clarity with respect to such policies and practices.

3. FMC Question No. 3. Should a proposed demurrage billing regulation distinguish between the demurrage MTOs charge to shippers and the demurrage MTOs charged to VOCCs? That is, should the Commission regulate the format in which MTOs bill VOCCs?

3. Maher Response to FMC Question No. 3. The Commission should not adopt a demurrage billing regulation that includes MTOs, let alone one that regulates the format in which MTOs charge demurrage to VOCCs. To the extent that Maher charges demurrage directly to its VOCC customers, as opposed to other Terminal users, those arrangements are set forth in privately negotiated, arms-length terminal service agreements,² which are subject to tailored governing law and dispute resolution provisions.

4. FMC Question No. 4. What percentage of demurrage and detention bills contain inaccurate information, and which information is most often disputed?

4. Maher Response to FMC Question No. 4. Real time information concerning free time and demurrage for each import container unloaded at the Terminal is available on Maher's customer portal and is updated in real time. Maher is unaware of any material or recurring issues concerning the accuracy of such information. In the unlikely event that it learns that specific information regarding an import container listed on the customer portal is inaccurate or otherwise inconsistent with the Maher Schedules, Maher would endeavor to correct such information immediately.

5. FMC Question No. 5. How much does the type of information included on or with demurrage and detention billings vary among common carriers, among marine terminal operators, and between VOCCs and NVOCCs?

5. Maher Response to FMC Question No. 5. Other than information that is readily available in their respective tariffs and schedules, Maher does not know how the types of information included on or with demurrage or detention billings vary between and among other regulated entities (VOCCs, NVOCCs, MTOs, etc.). With respect to the types of demurrage information provided by Maher, and accessible by its VOCC customers and other Terminal users, please see the response to Question No. 6 below.

² As stated above, marine terminal service agreements between ocean common carriers and MTOs are exempt from the FMC's filing requirements under 46 C.F.R. §535.309.

B. **MINIMUM BILLING INFORMATION**

6. FMC Question No. 6. What type of information should be required on billings? Should the Commission require certain essential information included on invoices (specific examples given), including information re: import shipments, export shipments, and “intervening clock-stopping events”? Please note if any portion of the charge is a pass-through of charges levied by the MTO or Port.

6. Maier Response to FMC Question No. 6. While Maier believes that marine terminals should provide certain basic information concerning their demurrage charges, Maier does not support the proposition that specific, one-size-fits-all billing information should be required of all MTOs across all ports. For its part, the Maier website contains a true and complete copy of the most recent Maier Schedules as well as a customer portal that is accessible by Maier’s registered VOCC customers and Terminal users. The portal contains real time information on each import container unloaded at the Terminal, including the container number, vessel name, carrier name, bill of lading number, vessel arrival date, vessel discharge date, container availability date, carrier and government holds, if any, free time expiration date, number of days on demurrage, tiered demurrage rates, and demurrage calculations. Due to the excessive cost and administrative burden of doing so, the portal does not indicate individual “clock-stopping events” other than those generally affecting all loaded import containers at the Terminal. Maier does not charge demurrage on export containers that are loaded on outbound vessels at the Terminal.

C. **BILLING PRACTICES**

7. FMC Question No. 7. What information or timeframes should be required for VOCC and NVOCC demurrage and detention bills? Should the Commission require different types of information or timeframes?

7. Maier Response to FMC Question No. 7. Maier has no position in response to this question as it concerns the practices of VOCCs and NVOCCs. The demurrage billing information and timeframes between Maier and its VOCC customers are typically set forth in privately negotiated terminal services agreements between the parties.

8. FMC Question No. 8. Do common carriers invoice multiple parties for demurrage and/or detention charges? If multiple parties are invoiced for charges, should the billing party be required to identify all such parties receiving an invoice for the charges at issue?

8. Maier Response to FMC Question No. 8. Maier does not know whether common carriers invoice multiple parties for demurrage and detention charges. In those circumstances where Maier is appointed by a common carrier to collect demurrage on the carrier’s behalf, and on its own behalf, Maier’s charges are directed to the individual container (as opposed to a particular party) and that information is available online. The individual party responsible for the payment of Maier’s demurrage charges is usually identified by custom and practice or otherwise pre-identified by the common carrier.

9. FMC Question No. 9. Should the billing party be required to identify the basis of why the invoiced party is the proper party in interest and therefore liable for the charges? (i.e., as shipper, consignee, beneficial cargo owner, motor carrier or an agent, or as a party acting on behalf of another party pursuant to the common carrier's merchant clause in its bill of lading.)

9. Maier Response to FMC Question No. 9. As a matter of custom, practice and law, and as set forth in Section IV.7.C of the Maier Schedules, Maier has the right to require that all demurrage charges be satisfied prior to the container being released from the Terminal. Under Section IV.7.A of the Maier Schedules, demurrage charges are typically for the "account of cargo." With the foregoing as background, and as stated above, Maier's demurrage charges are directed to the individual container and the responsibility to pay such charges is typically decided in advance between and among the VOCC, BCO, trucker, or other party in contractual privity.

10. FMC Question No. 10. Should the Commission, for purposes of clarity and visibility of charges, require MTOS to bill demurrage directly to shippers (rather than billing VOCCs who then bill shippers for demurrage)? In that scenario, MTOs would bill shippers directly for demurrage, and carriers would continue to bill detention directly to shippers)

10. Maier Response to FMC Question No. 10. No. As explained in response to FMC Question No. 9, the responsible party typically satisfies demurrage charges prior to the release of the container from the Terminal. Maier is not privy to the contractual arrangements between and among the ocean common carrier, shipper, BCO, trucker, etc. Accordingly, the implementation of a rule requiring all MTOs to bill demurrage directly to shippers would yield significant inefficiencies, as it would require Maier to gather billing information on shipper parties that may not be responsible for demurrage under their transportation contracts with ocean common carriers.

11. FMC Question No. 11. How long from the point of accrual of a demurrage or detention charge does it typically take to receive a demurrage or detention invoice or billing?

11. Maier Response to FMC Question No. 11. Maier does not issue physical demurrage invoices. As a matter of custom and practice, accrued demurrage charges are satisfied before an import container is released from the Terminal. In certain circumstances, Maier's VOCC customers have guaranteed the payment of demurrage by its customers, in which event demurrage charges are billed to the carrier guaranteeing the charges at a later date as agreed between Maier and its VOCC customer.

12. FMC Question No. 12. Should the Commission require demurrage and detention invoices to be issued within 60 days of the date when the demurrage/detention/per diem stops accruing?

12. Maier Response to FMC Question No. 12. As stated above, Maier does not issue physical demurrage invoices. Rather, all information concerning demurrage relating to a specific import container is available on Maier's customer portal. Any registered user of the customer portal can easily ascertain on a daily basis whether demurrage is due and in what

amounts, thereby enabling such user to make a demurrage payment prior to the container being released from the Terminal. Maher has over 37,000 users for its customer portal.

13. FMC Question No. 13. Should the Commission require specific information be included on the invoice regarding how to dispute a charge? If so, what information should be required? For example, should the Commission require invoices to include contact information for disputing charges, identify circumstances for when a charge may be waived, or identify the billing parties' evidentiary requirements sufficient to support a waiver of the charges?

13. Maher Response to FMC Question No. 13. Maher does not issue a paper invoice. Real time information concerning the accrual of all demurrage charges is contained on Maher's customer portal and is updated in real time. If there are any questions or disputes concerning a specific charge, Maher provides an email address and a telephone number which are available to address all such questions and disputes. Maher does not believe that specific types and forms of information should be required industry-wide as different ports and MTOS may have different customs, practices and trade usages. In addition, the information that is provided by a particular MTO may be further informed by a sequence of prior conduct (e.g., course of performance and course of dealing) between that MTO and its terminal users.

14. FMC Question No. 14. How long from the point of dismissal of a charge does it typically take to receive a refund? Should the Commission require that refunds of demurrage or detention bills be issued within a certain time period and what should that timeframe be?

14. Maher Response to FMC Question No. 14. Demurrage refunds are *de minimis* because Maher works proactively with truckers and cargo interests to resolve all requests for demurrage relief, mutually and fairly, before import containers leave the Terminal. As a matter of custom and practice, the length of time needed to make demurrage refunds depends on the method of payment. Maher is of the view that undisputed refunds should be made within a commercially reasonable time, depending upon specific circumstances.

15. FMC Question No. 15. How would a regulation on demurrage and detention billing requirements impact, conflict with, or preempt any other applicable laws, regulations, or arrangements (such as the UIIA)?

15. Maher Response to FMC Question No. 15. Like many MTOs, Maher operates both as a stevedore and a marine terminal operator. When acting as a marine terminal operator, Maher may have a warehouseman's lien under state law, which lien extends to charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to goods in its possession. Any proposed demurrage regulation which, as an unintended consequence, would interfere with a MTO's lien rights, should be avoided.

16. FMC Question No. 16. Please provide any other views or data you believe would help inform the Commission's decision whether to pursue a proposed regulation on demurrage and detention billing information and practices.

16. Maheer Response to FMC Question No. 16. None at this time.

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Maher takes this opportunity to thank the Commission for issuing the ANPRM and soliciting the comments and views of interested stakeholders.

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