



March 18, 2022

U.S. Federal Maritime Commission

Secretary@fmc.gov

Re: Docket No. 22-04, Comments on Demurrage and Detention Billing Requirements ANPRM

Dear Secretary:

Crowley Latin America Services, LLC (“CLAS”) and Crowley Caribbean Services, LLC (“CCS”) (together “Crowley”) submit these comments in response to the docket referenced above concerning advance notice of rulemaking of Detention and Demurrage (“D&D”) billing practices. CLAS and CCS are VOCCs. CLAS and CCS operate ten Lift On Lift Off container vessels in the capacity range of 683 to 1296 TEUs in the U.S. Atlantic/Gulf Coast – Central America and Caribbean liner trades. These are modest size vessels in this age of behemoth container ships serving the vastly larger East West trades. Our vessels are custom sized to service the niche markets in which we operate.

Crowley is a member of the World Shipping Council which is filing separate industry comments. Crowley generally supports those comments. The factual settings which those comments address, mainly concerning very large carriers in very large East West trades, are different from the Crowley factual settings we present here in connection with our niche North South markets, terminals, and smaller vessels.

Crowley has experienced some but no major increases in D&D charges and shipper disputes during 2021. While our volumes were down in 2020, we experienced an increase in 2021/2022. As for issues with shippers/consignees concerning D&D charges, we have been impacted by supply chain challenges in securing truckers and truck services, railroad services, and maintaining vessel scheduling. We view these occurrences as not the fault of shippers, and we work hard not to generate D&D charges for shipments impacted by these issues. Note that when the customer is responsible for the inland move (a port bill of lading) and equipment is not picked up within the allowed free time, Crowley will bill the customer for the charges incurred. From Crowley’s perspective in the Central America/Caribbean trade, we do not think there is a compelling reason to regulate the commercial relationships between carriers, shippers/consignees and marine terminal operators with respect to D&D charges. We have not experienced serious delays and bottlenecks at our terminals in Florida, Gulfport, Wilmington NC, Philadelphia, Central America and the Caribbean, and have not experienced substantially increased D&D charges and disputes. We do not charge customers for D&D when delays are caused by scarcity of trucking rails and matters outside the control of shippers or consignees. Indeed, Crowley has been able to keep cargo moving and maintain freight fluidity.

The question the Commission asks of whether certain minimum information should be required in the invoices for D&D is a good one. Good commercial practice necessitates pertinent information to be included to minimize potential disputes. The following is the information which Crowley provides in invoices to shippers or consignees: (a) invoice type (detention, demurrage, storage); (b) bill to name and address; (c) shipper and consignee name; (d) bill of lading and booking number; (e) equipment number; (f) vessel discharge date; (g) out gate date; (h) return date; (i) free time start date; (j) free time end date; (k) free time days applied; (l) billable days; (m) daily charge rate; (n) discharge port; (o) load port; (p) shipper reference number; (q) payment due

date and where to send payment; and (r) comment stating disputes need to be submitted within 30 days of invoice receipt to portal.ccspr.net/dispute. This information shows how the charges are calculated by showing the number of free days applied, the applicable billable days, and the daily charge rate.

There is a process and systems involved in creating and sending out D&D invoices to shippers/consignees. During that process, and sometimes after invoices are sent out, new information is obtained, sometimes while working with shippers. We are working on improvements to our systems to reduce the number of transactions we need to audit and review internally with our operations group and shippers for each shipment before the invoices are sent out. We believe this will result in continual improvements in efficiency and accuracy in D&D invoicing, and the many factors which go into it. The general time frame for billing D&D is within thirty (30) days. Some invoices go through additional audits and that delays the invoice release process. We have established systems logic for identifying scenarios when shipments are rolled due to our operations. We do not generate D&D billings in those circumstances. In addition, when there are natural disasters which impact D&D charges, we reset the non-billable period for D&D.

Crowley's experience is that if too short a time frame is mandated to get out D&D invoices, some pertinent information to make the invoice accurate may be left out. In addition to the information which customarily is included in the invoice (which we listed above), we may determine through dialogue with the shipper or consignee or during the review/audit process that other pertinent circumstances came into play. Crowley takes those circumstances into consideration in adjusting invoices where it is warranted, including when the clock should be stopped on the charges. If we know such circumstances at the time of billing, we take them into consideration and the billing is reflected accordingly. If when working with the shipper or consignee, we determine an adjustment is called for, we revise the invoice. Crowley feels that commercial practice should dictate the minimum information to be placed in the invoice. We also think that we have included sufficient pertinent information in our invoices, with one exception. We are currently rectifying that exception by referencing the source of the charge to either service contract or tariff. We have that data for each shipment and are working with our systems to modify our invoice template to include the pertinent service contract or tariff. While we make sure we include all the information listed, some flexibility is naturally required when we become aware of circumstances requiring further adjustment.

As indicated, we have not seen an overwhelming surge in the volume of cargo and D&D charges and disputes over the last several years. Our terminals have not experienced the type of logjams that have been in the news on the West Coast. We are unaware of shipper complaints relating to Crowley D&D charges being brought to the FMC.

We do not see a need for additional regulation from Crowley's perspective. Crowley entities operate as VOCCs, NVOCCs, and MTOs. When demurrage is involved for equipment which exceeds free time at one of our marine terminals, our invoice is billed as Crowley and shows where the demurrage was incurred. When detention charges are incurred outside the terminal, it is also billed as Crowley and the invoice shows where the detention charges were incurred. The D&D terms and conditions are dictated either by the CLAS or CCS D&D free time and charge provisions in our service contracts with shippers, or in the tariffs of CLAS or CCS. This is where privity with the shipper/consignee lies. Our terminal operators (Crowley Liner Services, Inc. in Jacksonville and Port Everglades and third party terminal operators in Gulfport, Wilmington NC, Penn Terminals outside Philadelphia, and in USVI, Honduras, Guatemala, Costa Rica, and Panama) serve CLAS or CCS as vendors, and do not bill our shippers directly. Crowley Logistics, Inc. (our NVOCC) also bills shippers as Crowley according to its contracts or NRAs/NSAs with shippers. We have not seen shipper confusion under this arrangement. Crowley's experience is distinct from D&D as an MTO, and consequently charging charges made by CLAS, CCS or CLI include any MTO charges. In our case, Crowley (meaning CLAS, CCS and/or CLI) is the proper charging party, based on the underlying service contract, NSA, NRA or tariff.

Crowley invoices the respective party on the bill of lading. This means we bill the shipper for exports and the consignee for imports, as those respective parties control the equipment. If the bill of lading reflects an NVO as

the shipper or consignee, the party incurring the D&D charge will be billed (including if an NVO). There may be times the billed party advises us that the charges belong to the other party. When this occurs, we obtain confirmation the other party will pay before the invoice is transferred to them for payment. Refunds are processed as soon as it is determined that the customer wants the refund in the form of a payment. There are times the customer wants to apply the credit to other open invoices on their account.

The Commission questions whether D&D terms and conditions should include events, such as container/equipment unavailability, lack of a return location, missing appointments or force majeure, which would justify stopping the clock on charges. It is difficult to foresee all the potential events that could justify stopping the clock. If each event was not foreseen and thus not included, would that mean that D&D charges could continue to mount? Flexibility is called for here, to allow the parties to equitably and commercially adjust.

We are attaching as part of our comments, a Crowley letter addressed to the Commission's Managing Director on November 3, 2021 in response to the Commission's Vessel Operating Common Carrier audit program assessing compliance regarding D&D. In it we are specific about the Crowley practices and invoicing procedures for D&D, which may help to address the concerns expressed in the ANPRM. You will see well-orchestrated procedures and systems to determine before billing, and if necessary after billing, the operational conditions and events which were involved and were not caused by shipper noncompliance, with adjustments in our D&D billing to account for these factors, very often in cooperation with our shippers/consignees.

Respectfully Submitted,

CROWLEY LATIN AMERICA SERVICES, LLC and CROWLEY CARIBBEAN SERVICES, LLC

A handwritten signature in black ink, appearing to read "Alan R. Twaits". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Alan R. Twaits
Vice President and Chief Counsel

ATTACHMENT TO FOLLOW –

Crowley letter addressed to the Commission's Managing Director on November 3, 2021 in response to the Commission's Vessel Operating Common Carrier Audit Program Assessing Compliance Regarding D&D.



November 3, 2021

Lucille L. Marvin
Managing Director
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001

Re: Detention and Demurrage Letter

Dear Ms. Marvin:

Crowley Liner Services (“Crowley”) received your letter of October 14, 2021, concerning the FMC’s Vessel Operating Common Carrier audit program assessing compliance regarding demurrage and detention (“D/D”). Crowley participated in the questionnaire from Commissioner Dye’s office during the investigation of D/D practices a few years ago. Crowley takes seriously its commitment to fair and transparent implementation of its D/D procedures and policies. We made certain adjustments to better comply with the Commission’s rules and support our customers with respect to ease of access to and use of our website and D/D rules.

Crowley serves north/south trades from/to Port Everglades, Jacksonville and Gulfport and Santo Tomas, Guatemala and Puerto Cortez, Honduras. Crowley also provides vessel service to Panama, Costa Rica, and certain points in the Caribbean, as well as being a major operator to Puerto Rico. We have not experienced the massive bottlenecks that are in the news daily at the ports of Long Beach and Los Angeles. Our service is running relatively smoothly.

You expressed interest regarding Accessibility of terms, conditions, and rate information. Crowley created a link in the Crowley website drop down menu under Resources clearly identifying “Detention/Demurrage”, which takes customers directly to our rules for Detention and Demurrage. No log in is required to view the D/D tariff rules, and there is no charge for access.

Regarding dispute resolution, our D/D tariff rules include an aspirational timeframe to address disputes within 30 days from receipt of notice from the customer of a dispute. We also show a clear list of what information is needed to file a dispute, the dispute email address and contact party where a dispute is to be submitted.

D/D is a very complex matter. Before issuing an invoice for D/D, our D/D team works with the applicable Crowley Land Transportation Team, in one of seven regions, in an effort to adjust free time and D/D invoices for operational issues unrelated to customer noncompliance before the invoice goes out, to reduce the potential for disputes. We review our system and notes in the system regarding dispatches for pick-up and delivery and other relevant matters. If, for example, we find that the equipment was left at the terminal, or at the consignee or shipper site, over the allotted free time due to insufficient Crowley trucking capacity, we do not bill for D/D because the delay was not the fault of the consignee or shipper.

After internal review, once we produce a D/D invoice and receive a customer dispute, we go over the complaint with what our system shows and with our applicable regional Land Transportation team, and then take it to the customer (consignee or shipper). We contact the customer by email or phone to resolve the issue. If the customer is correct, we cancel the applicable D/D invoice. There may also be gray areas, so we work out a compromise settlement.

The system is complex because of the myriad equipment and moves involved and the many potential causes for D/D. It is further complicated because, although our tariffs are uniform regarding rates for free time and D/D charges, service contract terms are not. Our system attempts to input applicable free time and D/D rates for each service contract customer. Crowley has scheduled system improvement that will facilitate this inputting, as

well as inputting of more operational information which will lessen the need to go to Land Transportation for operational inputs on time of dispatches, notifications, causes of delays, times of releases, changes in schedules, capacity shortages, third party customer holds, and other on the ground operational issues that impact free time and D/D. Given the hundreds of customer service contracts and terms, the Crowley D/D team also engages with the Crowley Pricing team to make sure the correct terms and rates are being applied. If we get a customer dispute that states the wrong rate was applied, the D/D team will check with Pricing to resolve whether the customer's complaint is correct.

In general, given the complexity, not all relevant information concerning equipment moves is available at time of invoicing in our system, even though we make internal checks. So often we must contact the customer and understand its reason for the dispute and confirm or investigate further with Land Transportation. Our customer may not always get back to us promptly. They may have to research in their own system. They may have other priorities. So, we often must wait for the customer to get back to us. A D/D dispute may cause the customer to hold up other payments due, or even return of other equipment, until the dispute is resolved. So, it is always in Crowley's commercial interest as well to resolve D/D disputes as soon as possible. As we have said, we aspire to resolve disputes within 30 days. That is not always possible in the real world.

Overall, although hard work, we do not see D/D as an overriding issue for Crowley and its customers. We have not, and very likely will not, face the severe congestion and terminal, cargo and vessel challenges that the U.S. West Coast faces. Our proactive and timely approach to dispute resolution has been effective and historically we have also found our customers are proactive and engaging as well for a timely solution to a given D/D situation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Alan R. Twaits".

Alan R. Twaits
Vice President and Chief Counsel
Crowley Liner Services, Inc./Crowley Maritime Corporation
