



Comments of
Maher Terminals LLC

Submitted to the
Federal Maritime Commission

In the Matter of
Request for Information
Docket No. 22-19

September 14, 2022

Maher Terminals LLC (“Maher”) files these comments in response to the Request for Information published by the Federal Maritime Commission (the “FMC” or the “Commission”) in the above-captioned proceeding, 87 Fed. Reg. 50085 (August 15, 2022) (the “Request”).

A. 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 Port Elizabeth 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 (“PANYNJ”). Maher has been in the stevedoring and marine terminal business at the same location for over 50 years. Its contract customers 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.

While the Terminal’s vessel operations run around the clock, the Terminal’s gates are open for the receipt and delivery of cargo from 6:00 a.m. to 7:00 p.m., Monday to Friday, which are the longest hours in the Port. As an accommodation to the shipping community, Maher has made significant efforts to open the Terminal gate for the delivery of cargo on Saturdays over the past two years in addition to extending weekday hours later into the evening. However, Saturday gate hours have been sparsely used and, as a result, Maher recently ceased gate activity on Saturdays. In addition, Maher contracts with a vendor to operate an empty container depot located in Port Elizabeth immediately adjacent to the Terminal (the “Empty Depot”). The Empty Depot is open for the receipt and delivery of empty containers from 6:00 a.m. to 6:00 p.m., Monday to Friday.

B. COMMENTS

Commission Issue No. 1

Whether congestion of the carriage of goods has created an emergency situation of a magnitude such that there exists a substantial, adverse effect on the competitiveness and reliability of the international ocean transportation supply system. If so, please explain why and provide examples or data to support your view. If not, please explain why and provide examples or data to support your view.

Maher Comments in Response to Commission Issue No. 1

Since the beginning of the COVID-19 pandemic in March 2020, supply chain congestion has existed within the Port and at many other ports and marine container terminals within and without the United States. However, from the standpoint of marine terminal operations in the Port, Maher does not believe that such congestion has created an “emergency situation of such a magnitude such that there exists a substantial, adverse effect on the competitiveness and reliability of the international ocean transportation supply system.”

Inefficiencies in the shipping supply chain are well known and have been well documented. Factors contributing to such inefficiencies have included, from time to time, trade imbalances with key trading partners, shortages, overages, and positioning imbalances involving intermodal equipment (containers and chassis), labor shortages, trucking shortages, the dramatic increase in container ship sizes, port infrastructure limitations and deficiencies, and the mismatch in working hours between and among supply chain participants, among others. Most of these factors are commercial in nature and well beyond the jurisdictional reach of the FMC to remedy under its Shipping Act authorities.

All of these logistical inefficiencies were greatly exacerbated in the United States by the global pandemic beginning in March 2020. The pandemic drove U.S. consumer demand for overseas goods to record levels¹ and those demands further exploited existing inefficiencies, causing unprecedented and well-chronicled disruptions throughout the supply chain. As many marine container terminals in major U.S. ports began reaching their operational capacities, the dwell time for many inbound ships waiting to berth at those terminals increased from days to weeks to months, creating havoc with liner schedules, reducing vessel carrying capacities, and causing numerous blank sailings and massive delivery delays across multiple markets.

At Maher, despite increases in container throughput over the last several years, and the supply chain dislocations caused thereby, the Terminal has continued to receive, deliver, handle, load and unload container cargoes without interruption. In fact, the Terminal's gate turn-times have remained relatively constant during this period. To the extent that supply chain congestion has affected Maher's Terminal operations, such congestion has not created an "emergency situation of such a magnitude such that there exists a substantial, adverse effect on the competitiveness and reliability of the international ocean transportation supply system." Even if an emergency situation did exist in the Port, Maher does not believe that it would be overcome by new, one-way data sharing requirements imposed on Maher and other MTOs in the Port.

As matters currently stand, complete information relating to every container loaded, unloaded and stored at the Terminal is currently available to the registered users of Maher's web portal, including all information required by the Ocean Shipping Reform Act of 2022 ("OSRA 2022"). Such information already includes the first date on which a container becomes available for pickup and delivery at the Terminal. Notably, there are over 43,000 registered users that have unfettered access to the web portal and the detailed information contained therein, including gate hours, cargo availability, empty returns and system interruptions.

¹ The economic recession in the United States caused by the pandemic did not stop Americans from purchasing goods. Instead, bolstered by loans from the Paycheck Protection Program, "which saved hundreds of thousands of businesses and millions of jobs, and nearly \$400 billion in government stimulus checks," U.S. consumers went on a buying spree, purchasing "nearly \$1 trillion more in goods in 2021 compared with pre-pandemic times." S.K. O'Neil, *Why the Supply Chain Slowdown Will Persist*, Foreign Affairs (Dec. 21, 2021) (<https://www.foreignaffairs.com/articles/world/2021-12-21/why-supply-chain-slowdown-will-persist>).

Maier has reviewed other comments filed in Docket 22-19, and posted on the FMC's website through September 9, 2022. As an initial observation, it should be mentioned that none of those commenters who favor the issuance of an "emergency order" has explained, with respect to Port operations, whether and to what extent supply chain congestion of the carriage of goods has created an emergency situation of a magnitude such that there exists a substantial, adverse effect on the competitiveness and reliability of the international ocean transportation supply system.

Despite the complete absence of any foundation basis, many of these comments follow a scripted list of what the "scope" of an emergency order should include. For example:

- Certain commenters state that MTOs that require "appointments" for the delivery of import container should provide certain information relative to their appointment systems. However, as explained in prior filings made with the Commission, Maier does not maintain an appointment system and does not require truckers to make an appointment to retrieve containerized cargo at the Terminal. Truckers and cargo interests are free to arrive at the Terminal at any time during published gate hours.
- Certain commenters complain about the processes by which empty containers are returned within the Port and state that an "emergency order" should address such complaints. However, as explained in prior filings made with the Commission, Maier receives instructions from its Alliance² and VOCC³ customers as to the specific location in the Port where truckers should return their empty containers. Locations may include the Terminal, the Empty Depot, or other marine container facilities in the Port. Maier posts such instructions at least 17 hours in advance (by 1300 hours daily) on the Operations portion of its website under the heading "Daily Empty Dispatch – Return Information." This information is also distributed by email to any and all truckers who request email notifications (also by 1300 hours on the prior day). Once such information is posted, Maier does not thereafter change empty return instructions for the following day as doing so would cause inevitable delays and confusion within the local trucking community.⁴
- Certain commenters state that MTOs should "not restrict the free flow" of empty container returns. As stated above, instructions posted by Maier with respect to empty container returns are provided to Maier by its Alliance and VOCC customers.
- Certain commenters state that "[w]hen on-street congestion and/or extreme traffic conditions warrant temporary closure of access to the terminal, notification must be

² The term "Alliance" means a global alliance of VOCCs that has a customer relationship with Maier at the Terminal.

³ The term "VOCC" means a vessel operating common carrier that has a customer relationship with Maier at the Terminal.

⁴ There were only four occasions since January 1, 2020, when Maier was required to deviate from this standard practice, as a result the overwhelming and unanticipated return of empties.

sent to Shippers, Ocean Carriers and Motor Carriers.” The public streets around and leading to the marine terminal facilities in the Port Newark and Port Elizabeth complex, are largely inadequate for the vehicular traffic generated by the Port. When streets are closed due to extreme traffic conditions, such closures are mandated by local law enforcement, not the MTOs, and are mostly temporary in nature.

- Certain commenters state that “[w]hen system issues adversely affect a terminal’s ability to process trucks, notification must be sent to Shippers, Ocean carriers and Motor Carriers.” Maher already does so through a combination of email blasts and timely notices posted on its website and web portal.

The comments received by the Commission fail to recognize the data sharing initiatives already underway on the Port and national levels. Within the Port, the PANYNJ’s Council on Port Performance serves as an information exchange to improve cargo fluidity.⁵ The comments also fail to recognize the work of the Port of NY/NJ Sustainable Services Agreement, FMC Agreement 201175-002 (the “SSA”), between and among six MTOs in the Port, including Maher. Maher refers the Commission to the comments filed by SSA for an explanation of how SSA is working to provide greater transparency and information about cargo.

The comments also fail to recognize the Freight Logistics Optimization Works (“FLOW”), “an information sharing initiative to pilot key freight information exchange between parts of the goods movement supply chain.”⁶ According to the Fact Sheet released by the White House, the FLOW participants, under the leadership of the U.S. Department of Transportation, “will work together with the Administration to develop a proof-of-concept information exchange to ease supply chain congestion, speed up the movement of goods, and ultimately cut costs for American consumers.”⁷ There are currently 36 participants in FLOW, representing diverse interests across the supply chain.

Commission Issue No. 2

Whether an emergency order pursuant to Section 18 of OSRA 2022 would alleviate or improve such an emergency situation – and if so, why, and, if not, why not.

Maher Comments in Response to Commission Issue No. 2

No. As set forth in the Request and OSRA 2022, an emergency order would compel data sharing by ocean carriers and MTOs “relating to cargo throughput and availability.” As explained earlier, Maher already provides relevant information regarding container availability to all

⁵ Maher is a member of the Council.

⁶ See The White House Briefing Room, *Fact Sheet: Biden-Harris Administration Announces New Initiative to Improve Supply Chain Data Flow* (March 15, 2022) <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/15/fact-sheet-biden-harris-administration-announces-new-initiative-to-improve-supply-chain-data-flow/>.

⁷ *Id.*

pertinent stakeholders. In addition, information concerning container throughput throughout the Port is already posted by the PANYNJ on its website, as is real time anchorage information with respect to vessels waiting to enter the Port.⁸

Commission Issue No. 3

The appropriate scope (duration and geographic) of such an emergency order, if the Commission were to issue such an order and the basis for that scope.

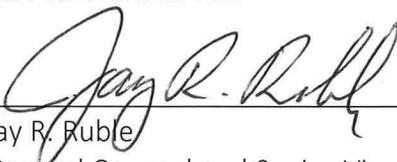
Maher Comments in Response to Issue No. 3

Not applicable.

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

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⁸ See <https://www.panynj.gov/port/en/our-port/facts-and-figures.html>.