



National Association of Waterfront Employers

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January 31, 2018

VIA EMAIL AND MESSENGER

Ms. Rachel E. Dickon
Assistant Secretary
Federal Maritime Commission
Room 1046
800 North Capitol Street, NW
Washington, D.C. 20573

Re: FMC Docket No. P4-16

Dear Ms. Dickon:

The undersigned testified on behalf of the National Association of Waterfront Employers (“NAWE”) at the January 17, 2018 hearing in the above-captioned docket. During the question and answer portion of the hearing, Commissioner Maffei asked if the Commission had the authority to adopt substantive regulations and/or interpretative statements of policy relating to detention and demurrage. I hereby submit the following in expansion and clarification of my oral answer to that question.

As a general matter, the Commission has authority to adopt substantive regulations and/or interpretative statements of policy with respect to matters within its jurisdiction. However, like all independent agencies, the Commission is a creation of statute and its authority is limited to that granted to it by statute.

As explained more fully at pages 3-5 of NAWWE’s February 27, 2017 comments in this proceeding, section 10(d)(1) of the Shipping Act of 1984 eliminated the authority for the Commission to determine and prescribe just and reasonable regulations and practices that was found in Section 17 of the Shipping Act, 1916. Thus, to the extent that any substantive or interpretive rule adopted by the Commission prescribes a just and reasonable regulation or practice, such prescription may be beyond the authority of the Commission. NAWWE believes that at least some of the relief sought by the petition constitutes a prescription of a just and reasonable practice and would, if granted, be subject to legal challenge.

In its February 27, 2017 comments, NAWWE also explained that the Commission lacks the authority to regulate the level of rates and charges. NAWWE believes that adoption of a rule which prohibits collection of demurrage “exceeding a compensatory rate” could be subject to

legal challenge on the grounds that it constitutes an impermissible regulation of the level of rates and charges.

Thus, while as a general matter the Commission has authority to adopt substantive regulations and/or interpretative statements of policy with respect to matters within its jurisdiction, that authority is not unlimited. Moreover, it appears that some if not all of the relief sought by the petition could be found to exceed the Commission's authority.

Sincerely,

A handwritten signature in black ink, reading "John E. Crowley, Jr.", with a long, sweeping horizontal line extending to the right.

John E. Crowley, Jr.
President