

ORIGINAL



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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

PUBLIC VERSION – confidential materials excluded

January 31, 2018

Ms. Rachel E. Dickon
Assistant Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Washington, DC 20573

Ref: Petition No. P4-16 Questions for the Record – Reply of MOL (America);
Public Version

Dear Ms. Dickon:

Below is in response to the follow-up questions from Commissioners Dye and Maffei from the Demurrage and Detention hearing on January 16-17. By separate cover letter, in conformance with the instructions served by the Secretary in this Docket on December 20, 2016, we are requesting confidential treatment for some of the information in our reply. Confidential information that has been redacted in this document is indicated by empty square brackets []. In addition, we have requested confidential treatment for Attachment #1, which consists of company internal decision-making processes and policies.

Questions from Commissioner Dye

1) For calendar 2017:

Import Detention

[%] of inbound shipments (measured in teus) incurred detention billing
[%] of the inbound shipments that incurred detention were mitigated or cancelled

Export Detention

[%] if export shipments (in teus) incurred detention billing
[%] of those export shipments that incurred billing were mitigated or cancelled

Import Demurrage

[%] of inbound teus incurred demurrage at the terminals
[%] of those teus in turn had demurrage billed to the customer (in other words MOL upfront absorbed demurrage for [77.9%] of the moves due to agreed extended free-time or other reasons)

[%] of moves that were billed demurrage were then mitigated or cancelled

So, from above, just less than [%] of inbound volume was billed demurrage that was not mitigated or cancelled

Export Demurrage

[%] of export moves incurred terminal demurrage
[%] of those moves incurring demurrage (or [%] of all export shipments) in turn had demurrage billed to the customer.

The proportion that was mitigated or waived is not broken out for import and export

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2) MOL's *Detention* billing process follows the standard UIIA agreement (available at <http://uiia.org/sites/default/files/documents/newuiia-Home.pdf>) with adjustments for any commercially agreed exceptions. Upon notification of terminal closures, the billing system will also be adjusted accordingly, to either provide additional free day(s), or waive the equivalent detention days for the period the terminal is closed. Billing is coordinated by our Operations group in Lombard, IL, and collections by our Accounts Receivable group in Woodbridge, NJ.

Demurrage billing varies based on the individual MTO practice. Certain terminals bill and collect on behalf of MOL, based on MOL's tariff or individual commercial agreement, for which MOL pays a proportional administration fee. Elsewhere, MOL bills and collects directly. For the latter, when notified of terminal closures, MOL will increase the free-time accordingly, again in line with the number of days the terminal is closed. Demurrage billing is managed by the Customer Service group in Atlanta with collections again handled by Accounts Receivable in Woodbridge.

During the 2014-2015 West Coast labor disputes, MOL proactively waived demurrage billing on a large scale, even though the terminals technically remained open. That experience led to development of the more detailed procedures referenced here. Free time exceptions for demurrage and detention are routinely negotiated as part of the overall service contract terms and conditions negotiations with both BCOs and NVOs, normally on an annual basis.

3) Our Standard Operating Procedure (SOP) for non-ocean freight dispute resolution is included in Attachment 1 (for which we have requested confidential treatment). Disputes are handled by our 'Customer CARE' group in the Atlanta Service Center. Depending on the nature of the issue, the timing for dispute resolution can vary widely, from a few days up to several months. Our KPI to resolve disputes is 72 hours, which we meet approximately 60% of the time. A small number of disputes can take weeks or months to resolve, especially when the dispute gets wrapped up in subsequent service contract negotiations. As indicated in the SOP, front-line personnel in the CARE Team have waiver authority up to [\$]. Higher level amounts then need approval further up in the organization.

4) Our formal policies are outlined in Attachment 1, referenced above (confidential). We have not made the procedures available to the public. However, where issues arise, customers tend to understand that there is an established internal policy. In general, as mentioned at the hearing, MOL does strive to be as accommodating and reasonable as possible, and does not want demurrage and detention issues to be an impediment to securing what is otherwise attractive business.

5) As discussed at the hearing, MOL (America) has quite a number of concerns were the request to be adopted, as below:

- (i) All burden of proof would apparently be shifted to the ocean carrier. This would likely lead to both an increase in the number of disputed transactions plus greater time required in researching the circumstances and developing a case. All this activity would by necessity be manual with the need to address largely on a shipment by shipment basis.
- (ii) Weather issues become automatically the risk of the ocean carrier. Besides again likely

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creating more disputes to be addressed, the issue of just who determines if there was a weather issue and the degree of severity and criteria remain unclear.

(iii) Terminal congestion is potentially another subjective factor that raises the same concerns as (ii). Gate activity may ebb and flow over the course of a day or week, and alleged congestion at a particular time might be used as a reason to secure additional free time, when arrangements could readily have been made to pick up or deliver a container at an alternative time. In other words, there would seem to be considerable opportunity to 'game' the system here.

(iv) Government actions, such as Customs holds, are in no way the result of actions of the carriers and terminal operators and again it would seem unfair for the operators to incur the burden for these delays. The need to adjust demurrage billings for all government holds creates additional administrative burden.

(v) The petition suggests the possibility of just charging for terminal storage costs for issues that are outside of customer control. This ignores the opportunity costs on ocean carrier equipment and the critical need to keep equipment moving and the overall carrier network in balance and fluid. The costs here can be quite substantial.

Question from Commissioner Maffei

In theory, the idea of customers being granted unlimited free time against payment of an increased fee or freight rate is possible, in the sense that any service can be provided if the price is high enough. However, as a practical matter, we are skeptical of customer interest. While there are exceptions, in our experience, customers have generally been unwilling to pay higher rates for higher levels of service. Customers instead negotiate extended free-time as part of service contract negotiations, to the extent they believe they are going to need the provision. MOL and other carriers do offer seasonal detention-in-transit (DIT) where containers might be stored en route in a lower cost location to the benefit of the customer. The commercial issues are complicated by the fact that any open-ended demurrage and detention provision offered by carriers would also have to factor in the ability of MTOs to continue to charge demurrage (or we move the boxes out to an off-dock storage depot, which also has costs).

In addition to the fact that it is very unlikely that there is interest in paying for unlimited free time, it is critical to consider the operational implications of such an approach. If such a product were available, and a large number of customers chose and made use of it, it would cause serious terminal congestion (because shippers could store goods on the terminal, where space is limited) and serious carrier equipment shortages (because of shippers using loaded equipment as storage on and off the terminal, and potentially using empty containers for domestic moves). The incentives to timely remove containers from the terminal and timely return empties would be entirely removed in such a scenario, which would slow the velocity of the entire international intermodal ocean transportation system. This would be the tail wagging the dog, with detention and demurrage (a generally manageable issue) being addressed in a way that would harm the entire transportation system by causing much more congestion. This reinforces the fact that free time, detention and demurrage are first and foremost about operations, not money.

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Thank you for the opportunity for MOL (America) to voice our opinions and please let me know if you have any further questions.

Sincerely,

Richard J. Craig

Richard J. Craig
President & CEO
MOL (America) Inc.

by J.C.