THE
NATIONAL
INDUSTRIAL
TRANSPORTATION
LEAGUE

January 31, 2024

Hon. William Cody
Secretary
Federal Maritime Commission
800 N. Capitol Street, NW
Washington, D.C. 20573

Re: Testimony of National Industrial Transportation League, Informal Public Hearing on the Impact of Current Conditions in the Red Sea, and Gulf of Aden Regions, FMC-2024-0003

My name is Lori Fellmer, I serve on the National Industrial Transportation League's Ocean Transportation Committee Leadership Team and am the former Chair of the Committee. I am also the Vice President of Logistics and Carrier Management at BassTech International. On behalf of NITL, I want to thank the Commission for holding this Hearing regarding how conditions in the Red Sea and Gulf of Aden have disrupted commercial shipping and global supply chains.

NITL is very mindful of the aggressions in the Middle East and the dangers faced by ocean carriers and their crews operating commercial vessels in the region. I want to be clear that NITL strongly supports measures to ensure their utmost safety and security, which must be a top priority. However, NITL members have concerns that the conditions in the Red Sea are causing carriers to assess unreasonable rates and charges with limited notice, and shippers are experiencing substantial disruption to supply chains due to unanticipated costs and shipment delays.

NITL is the Voice of the Shipper on freight transportation policy matters involving all modes, including ocean. NITL members require efficient, competitive, and safe transportation within the United States and beyond to meet their supply chain requirements. NITL members move a variety of commodities, including consumer goods, agriculture, chemicals, steel, forest products, fuel, food, and more. NITL members spend billions of dollars on freight annually, and our global shippers require reliable and cost-effective ocean transportation services from vessel-operating common carriers to meet their production and customers' requirements.

I. Unreasonable Rates and Charges

The Commission is authorized to grant a Special Permission to a carrier upon the showing of "good cause" to allow an immediate increase in rates or charges without the requisite 30-day notice.[1] Since October 2023, the Commission has granted ten Special Permissions to carriers relating to the conditions in the Red Sea and Gulf of Aden. Some of these carriers are continuing to service the Red Sea and Gulf of Aden, while others are avoiding the region entirely and circum-navigating Africa.

Permitting these immediate and substantial increases has negatively impacted shippers in several ways, especially small to mid-sized shippers who lack service contract protections to mitigate the impact of the charges. Even larger companies who negotiated service contract protections are facing pressure from carriers to accept the higher charges to secure vessel space. Another concern is a significant lack of clarity in some carriers' tariffs regarding the applicability of these charges. Clarity regarding when and where the charges apply is essential for shippers to understand their own transportation costs and to communicate the impacts of the charges with their customers.

NITL members are also concerned about the reasonableness of Special Permission charges and other spiking rates and charges. Surcharges from carriers who are avoiding the region vary, ranging from $200 to $800 to $1500 per TEU. Rates from Asia to Northern Europe rose 151% to more than $4000 per FEU. And routes from Asia to the U.S. West Coast have increased 63% to more than $2700 per FEU. One member's rates from Southeast Asia increased a minimum of $600/TEU on trans-Pacific services for January sailings and another $400/TEU in February. Spot market rates are also increasing rapidly in trades outside of the Middle East, up nearly 40% in the Asia to U.S. West Coast trade.[2]

Although a few larger members have been able to avoid the charges by relying upon large NVOCCs or promising to tender higher volumes to a carrier, it is extremely challenging for most shippers to absorb these costs or to pass them on to their customers, given the level of the increases. Despite frequent communications between NITL members and their customers, the terms of pre-existing sales contracts may restrict the ability to pass along the charges. And, without sufficient notice of surcharges, shippers cannot adequately plan to mitigate the adverse effects that these higher costs have on their operations. The scope of scale of the increases are raising suspicions, and it would be entirely improper for the carriers to use rising operational

[1] 46 U.S.C. § 40501(e) and 46 C.F.R. § 520.14.
[2] Ocean Shipping Rates Surge as Red Sea Attacks Continue - WSJ.

costs in the Red Sea region to unreasonably increase rates and charges with an intent to increase profits.

The Commission has authority to address unreasonable charges imposed by an ocean common carrier under the Shipping Act of 1984, and recent amendments adopted in the Ocean Shipping Reform Act of 2022 (OSRA22).[3] In evaluating the reasonableness of charges, the FMC must consider "whether the charge levied is reasonably related to the service rendered" and "whether the correlation of that benefit to the charges imposed is reasonable."[4] NITL encourages the FMC to investigate questionable charges and use its authority to protect the shipping public and ultimately consumers from the adverse consequences of unreasonable charges.

II. Shipment Delays

Shippers are also experiencing significant shipment delays, which negatively impacts manufacturing, goods distribution, and consumer sales. This disruption undermines the predictability of supply chains, especially those that operate "just in time," and could lead to shortages of goods. The displacement of shipping containers due to delays and rerouting of vessels is another growing concern.

Rerouting shipments around the Cape of Good Hope is certainly longer and has required operational changes, but this does not mean carriers cannot redesign reliable schedules. Circumnavigating Africa adds 3000 to 3500 nautical miles and up to ten additional days to the trip. There are also increased fuel and increased insurance costs. These added costs and increased rates have already dealt a shock to the global supply chain. The carriers must take steps now to normalize reliable services and stabilize costs by adjusting vessel capacity, equipment availability, and sailing schedules. It is not necessary for carriers to accept the status quo, while continuing to use this situation to reap enormous profits.

While NITL and its members understand the imposition of reasonable surcharges in the short-term to address added costs for the re-routing of services, there is little justification for imposing Peak Season Surcharges at this time of year, particularly on existing routes from Asia through the Panama Canal—yet this is now occurring.

Implementing peak season surcharges in response to challenges in the Red Sea and Gulf of Aden is inappropriate for several reasons. First, peak season surcharges are *seasonal* because they repeat each year. The conditions in the Red Sea and the Gulf of Aden are not seasonal but rather

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[3] *See* 46 U.S.C. §§ 41102(c) and 41104(a)(14).

[4] *Volkswagenwerk Aktiengesellschaft v. Fed. Mar. Comm'n*, 390 U.S. 261, 282 (1968)); *see also Ind. Port Comm'n v. Fed. Mar. Comm'n*, 521 F.2d 281 (D.C. Cir. 1975); *Port Elizabeth Term. & Warehouse Corp. v. Port Auth. of N.Y & N.J.*, 1 F.M.C.2d 29, 41 (April 17, 2018); *China Shipping Container Lines Co. Ltd et al. v. Port Auth. of N.Y. & N.J.*, No. 11-12 Order Denying Complainants' Motion for Summary Judgment (June 20, 2013).

a unique event due to geopolitical factors. Second, "peak" season surcharges occur during a period of high demand in shipping. However, the rerouting of shipments due to the current situation in the Middle East would change port locations but should not be causing substantial shifts in freight demand. Rather, transit times have increased and there is ample news in the industry stating that the overcapacity is sufficient to accommodate the longer transit times and sailing schedule changes.

NITL understands that the short-term misalignment of schedules could cause equipment imbalances. We saw this because of the *Ever Given* incident in the Suez Canal in March 2021. But at that time the carriers did not institute a peak season surcharge.

Delayed deliveries are also causing stresses to cash flow and increased financial costs. Members have experienced increased transit times of up to 16 days on a major route from Ho Chi Minh City, Vietnam to Jacksonville, Florida which is used to transit the Suez and is now re-routed. Members have also experienced a shortage of TEU containers in Southeast Asia. This shortage has had a domino effect and has resulted in cancelled bookings and delays, thereby forcing members to use alternate carriers and/or routes at significantly higher rate levels.

One member has had trouble booking shipments out of East Africa – even with an applicable $1500 emergency surcharge. This is because many carriers have suspended service entirely out of East African ports. Also, because many available containers have been absorbed from extended voyages, carriers have not been willing to provide extended free times on/off terminal. In many cases, this further stresses the supply chain and imposes additional drayage and other costs on US industries. Finally, to address the impacts of longer transit times, shippers are required to make supply chain adjustments, including advancing Purchase Orders or forecasted shipments to increase inventories to satisfy customer delivery obligations resulting in unanticipated cost impacts.

III. Conclusion

Thank you again for this opportunity to present NITL's views and concerns to the Commission. The FMC has a critical role to play in advancing and protecting both the national security and commerce of the United States during this challenging situation. We appreciate your important oversight responsibility and ask that you use your authority as needed to prevent unreasonable increases to rates and charges, and to encourage carriers to make operational adjustments to minimize disruption and rising costs in the impacted trades. I am happy to answer any questions you may have.