



C.H. POWELL COMPANY

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From: "David Powell" <depowell@chpowell.com>
To: <secretary@fmc.gov>
Date: 9/28/04 5:48PM
Subject: Comments in response to Motion for Leave filed by UPS/NITL et al.

Dear Secretary VanBrakle,

Please find attached an electronic version of a comment letter filed in response to Motion and Supplemental Comments for pending petitions P3-03, P5-03, P7-03, P8-03, P9-03, P1-04, P2-04, P4-04

Sincerely,
David E. Powell

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Honorable Bryant L. Van Brakle
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

September 27, 2004

RE: Motion for Leave filed by United Parcel Services, Inc., National Industrial Transportation League, BAX Global Inc., FEDEX Trade Networks Transport & Brokerage, Inc., Transportation Intermediaries Association, C.H. Robinson Worldwide, Inc., and BDP International, Inc.

Petition Nos. P3-03, P5-03, P7-03, P8-03, P9-03, P1-04, P2-04, P4-04

Dear Secretary Van Brakle:

My name is David E. Powell. I am Vice President of Operations at C.H. Powell Company. C. H. Powell Company is a licensed Ocean Transportation Intermediary with license number 0176NF.

C. H. Powell Company has seventeen offices throughout the United States, with a total staff of approximately 220 employees. NVOCC services are performed at nine of these locations. C. H. Powell Company performs approximately 13,000 NVOCC transactions per year.

C. H. Powell Company has an exclusive agency agreement with Damco Maritime International B.V. of the Netherlands. Via the Damco Maritime Network, C.H. Powell Company has agents in more than 45 countries.

On behalf of my company, I would like to submit comments in response to the above referenced motion. The movants assert that there is industry consensus to request that the FMC move quickly to use its exemption authority to authorize all NVOCCs to enter into service contracts with their customers. C.H. Powell Company believes that no such industry consensus exists. My company's position is that the movants do not go far enough in their requested regulatory relief.

The service agreement proposal does not address the main shortcomings contained in the original petitions. It merely shifts the administrative burden from one expensive and archaic medium to another. NVOCC business is mostly transacted with the shipping public based upon individual transactions. Attempts to identify the charges associated with these transactions in a structured tariff or contract format is quite burdensome and is often impractical to achieve. The amount of paperwork that will be required for shippers and NVOCCs to capture the pricing details of each unique transaction in a service agreement will even exceed the existing tariff method, which places no administrative burden on the shipper. The proposed motion to allow NVOCC service contracts will lead to increased, rather than decreased, administration.



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NVOCCs also make use of multiple underlying carriers, each of whom structure their pricing in different ways and according to different schedules. Ocean carriers have subverted the initial intent of service contracts, as firm price commitments over time, to merely a convenient filing platform intricately linked with underlying tariffs, subject to change on short notice. Carriers consistently forward file unreasonable market rates and surcharges, only to adjust them downward at the last minute. Virtually all carrier service contracts, even with NVOCCs, are subject to general tariff increases or surcharge adjustments, which are impossible for NVOCCs to manage, given the carriers' different schedules, different pricing approaches, and different attitudes toward negotiation. NVOCCs, as non-asset based middlemen, would have to structure service agreements with shippers that mirror multiple underlying pricing structures, an impossible task.

Standard USA business practices allow for a myriad of pricing schemes and contract recording media between shippers and NVOCCs. Most customer-vendor relationships in other industry sectors have taken full advantage of modern technology to streamline the process. Today's ocean shippers do not understand the current regulatory burden. They do not actively participate in the process. They do not benefit from it in any way. Rather, the process impedes the shippers' ability to define a flexible, proactive customer-vendor relationship.

The NCBFAA petition seeking a broad tariff exemption for NVOCCs is far more preferable, as it eliminates needless expense, permits NVOCCs to be more responsive to the ocean shipping marketplace (filling service voids left by the more staid asset-based carriers) and still permits the FMC to oversee the trade and correct any abuses or malpractices.

I, David E. Powell, declare under penalty of perjury that the foregoing is true and correct. Further I certify that I am qualified and authorized to file this verified statement.

Executed on September 27, 2004.

(Signature)_____

David E. Powell
C. H. Powell Company
Vice President Operations