

FEDERAL MARITIME COMMISSION

PETITION OF MAERSK LINE A/S FOR
AN EXEMPTION FROM
46 C.F.R. § 530.8

Petition No. P1-17

Served: July 19, 2017

BY THE COMMISSION: Michael A. KHOURI, *Acting Chairman*; Rebecca F. DYE, William P. DOYLE, and Daniel B. MAFFEI, Commissioners.

ORDER GRANTING PETITION

On June 27, 2017, Petitioner Maersk Line A/S (“Maersk”) was attacked by a computer virus that, among other things, inhibited the operation of its service contract information system. As a result, on June 30, 2017, Maersk petitioned the Commission for an exemption from 46 C.F.R. § 530.8 “that would permit Maersk Line to apply service contract rates contained in new service contracts and amendments to existing service contracts retroactively to shipments received on or after June 30, 2017, for a period of up to twenty (20) days.”

Because the requested exemption will not result in substantial reduction in competition or be detrimental to commerce, we grant Maersk’s petition.

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I. BACKGROUND

On June 27, 2017, Maersk was attacked “by the so-called Petya virus.” Pet. at 1.¹ According to Maersk, the virus “severely inhibited” the system that stores Maersk’s service contract information and rendered Maersk unable to: (1) determine which service contracts and service contract rates were scheduled to expire at the end of June or early July, 2017; (2) identify which shippers to contact to extend or renegotiate expiring contracts and rates; and (3) electronically file service contracts and amendments with the Commission. *Id.*

On June 30, 2017, Maersk petitioned the Commission for an exemption “from the service contract filing provisions of the Commission’s regulations for twenty (20) days starting from the date of this petition.” *Id.* Maersk focuses particularly on 46 C.F.R. § 530.8 and requests an exemption from that regulation “that would permit Maersk Line to apply service contract rates contained in new service contracts and amendments to existing service contracts retroactively to shipments received on or after June 30, 2017, for a period of up to twenty (20) days.” *Id.*; *see also id.* (“By granting this petition, the Commission will allow Maersk Line to apply those rates which would have been agreed upon with customers in the absence of the cyberattack to shipments tendered during the period between June 30 and the date an appropriate contract or contract amendment is filed.”). Maersk asserts that the 20-day time period should provide it sufficient time to regain access to its service contract database and filing capabilities, identify expiring contracts and rates, and obtain agreement with shippers regarding the disposition of the expiring contracts and rates.

¹ Maersk subsequently indicated on its website that it understood the virus was called “Not Petya.” A.P. Moller-Maersk, Maersk continues the progress towards full recovery from the cyber attack on Tuesday 27 June (July 4, 2017), www.maersk.com/en/operationalupdate/general-information.

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The Commission issued notice of Maersk's petition and requested comments from interested parties on July 5, 2017. Notice was published in the Federal Register on July 11, 2017. No comments were filed.

II. DISCUSSION

Exemptions from the Commission's service contract regulations are governed by 46 U.S.C. § 40103 and 46 C.F.R. § 502.92. *See* 46 C.F.R. § 530.13(b).² Both the statute and the regulation allow the Commission to exempt "any specified activity" of persons subject to the Shipping Act from the requirements of Part 530 of the Commission's regulations. 46 U.S.C. § 40103(a); 46 C.F.R. §§ 502.92(a), 530.13(b). To grant an exemption, the Commission must find that "the exemption will not result in substantial reduction in competition or be detrimental to commerce." 46 U.S.C. § 40103(a); 46 C.F.R. 502.92(a).

Maersk requests relief from the service contract filing provisions of the Commission's regulations, in particular 46 C.F.R. § 530.8. Section 530.8(a)(1) provides, in pertinent part, that a carrier must file a service contract with the Commission "*before* any cargo moves pursuant to that service contract." (emphasis added).³ Similarly, although not mentioned in the petition, 46 C.F.R. § 530.14(a) provides that "[p]erformance under an original service contract may not begin before the day it is effective and filed with the Commission," and performance under a service contract amendment may not begin until the day it is effective, as long as the amendment is filed within thirty days after the effective date.

² Although Maersk bases its petition on 46 C.F.R. § 502.76 (now § 502.94) and 46 U.S.C. § 40103, the applicable rule is 46 C.F.R. § 530.13. This regulation incorporates 46 U.S.C. § 40103 as well as "46 C.F.R. § 502.67." Rule 67, however, has been moved twice, first to § 502.74, and now to § 502.92.

³ Section 530.8(a)(2) of 46 C.F.R. requires that an amendment to a filed serviced contract be filed with the Commission no later than thirty days after any cargo moves pursuant to the amendment.

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The upshot is that under these regulations, a carrier generally cannot apply a service contract retroactively. But that is what Maersk seeks to do for the time period at issue: “In other words, rather than requiring customers to pay higher tariff rates to shipments tendered during this period, the grant of this petition will permit Maersk Line to apply service contract rates to such shipments that were agreed upon and filed after the date of cargo receipt without violating the Shipping Act.” Pet. at 1-2. Maersk argues that the requested relief “will not reduce competition or be detrimental to commerce, as it merely allows Maersk Line to provide service to its customers on the same commercial terms as it would have had it been able to conclude and file the appropriate contracts and contract amendments.” Id. at 2.

We agree and find that the requested exemption will not result in substantial reduction in competition or be detrimental to commerce. Maersk seeks exemption from a small subset of the Commission’s service contract regulations, for a limited period of time, in order to approximate the status quo had the cyber attack never occurred.

III. CONCLUSION

The Commission believes that the process requested by Maersk will adequately protect affected shippers and their rights.

THEREFORE, IT IS ORDERED, that Maersk’s Petition is GRANTED, provided that:

1. Upon granting of the Petition, Maersk completes all amendments within 20 days of the filing of the Petition (up to July 20, 2017);
2. As soon as practical, but in any event no more than 30 days after execution, Maersk file any service contract amendments with the Commission;

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IT IS FURTHER ORDERED, that this proceeding is discontinued.

Rachel E. Dickon
Assistant Secretary