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BEFORE THE
SURFACE TRANSPORTATION BOARD



DOCKET NO. MC - F-21034
CLEAN TRUCK COALITION, LLC

REPLY TO PUBLIC COMMENTS
TO POOLING APPLICATION
FILED PURSUANT TO
49 U.S.C. SECTION 14302

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Dated: August 3, 2009

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COMES NOW, the member motor carriers (the "participating motor carriers") of the Clean Truck Coalition, LLC (the "Coalition") and herewith submit this Reply to the Public Comments submitted by Ernesto Jesus Nevarez ("Nevarez") and the International Brotherhood of Teamsters ("IBT"), respectively, as follows:

I.

INTRODUCTION

The subject Pooling Application ("Application") was filed on June 3, 2009. Thereafter, on June 25, 2009, notice of the Application was published in the *Federal Register* pursuant to which any comments thereto were required to be filed on or before July 27, 2009.

The comment period is now closed. The record reflects that the only comments filed in response to the *Federal Register* notice were those of Nevarez and the IBT.

The participating motor carriers identified in the Application take this opportunity to briefly respond to the submissions of both Nevarez and the IBT without, however,

dwelling on obvious editorial commentary offered by each as essentially non-interested parties, none of which is, in the end, germane to the purposes of Section 14302 and Part 1184.

II.

REPLY

First and foremost, it is important to note that despite the FR Notice and considerable trade press coverage, no comments were offered by any of the large population of motor carriers, port and city officials, marine terminals, customers, shippers and other operators who have a regular, continuous and direct connection to the operations at both the Port of Los Angeles and the Port of Long Beach. No one in the transportation community operating within the Clean Truck Program ("Program") has come forward to object to the comprehensive business plan put forward by the small group of participating motor carriers under Section 14302. The lack of any such input certainly supports the inference that these varied interests, including other motor carriers, operating in the same service area and under similar conditions as the participating carriers were not concerned with and, in fact, appear to endorse the Application.

Absent any actual, direct interest in the relevant transportation market, Nevarez and the IBT, instead, seek to pursue a personal agenda which, individually and collectively, is not appropriate in this proceeding.

In the case of Nevarez, he offers no indication of what, if any, specific interest he has in moving containers to and from the subject ports. His comments are silent on how he or any business of his might be adversely impacted by approval of the Application. Instead, in a confusing and disjointed fashion, he seems to be concerned that somehow the Pooling Application would usurp the leasing regulations of the Federal Motor Carrier

Safety Administration ("FMCSA"), 49 C.F.R. Part 376, and, perhaps, certain provisions of the statutes of the State of California.

To the contrary, the pooling in question would not alter the leasing regulations in any manner nor impact the application of California's law. The leasing regulations would remain fully applicable to all agreements involving the lease and exchange of clean trucks between the participating motor carriers. Each Coalition member company would be responsible for complying with them for every agreement it entered into. The Application does not seek nor allow authority for any of the operators to avoid the law, much less existing contractual commitments related to the operation and financing of the clean trucks operated by each of them. Mr. Nevarez's unfounded belief otherwise is based on pure speculation and is not credible.

With regard to the IBT, the comment is clearly intended to promote a union agenda. This Board is not the proper forum for such an organizing strategy. To try and leverage this proceeding to promote such an ulterior motive is inappropriate.

While the IBT reports some prior experience with one of the participating motor carriers, Southern Counties Express, Inc.¹, none of the operators, including that company, have any connection with the union.

Furthermore, IBT's comments rely on misinformation to attack the Application. For example, the IBT cites a portion of the Operating Agreement (Section 14.1) as indicative of a "price-fixing" arrangement with regard to unnamed "owner operators." This provision and the entire Application itself makes clear that the carriers intend to create a pool of clean trucks to be used as needed to meet transportation demands and the goals of Clean Truck Coalition, consistent, as explained throughout the Application,

¹ The IBT questions whether Southern Counties Express, Inc. is properly licensed. While this company's common carrier authority was inactive, its contract carrier permit has remained active and is in good standing. The IBT chose to ignore this legal status. As a matter of information, Southern Counties Express, Inc. has reactivated its common carrier certificate. (See Appendix 1)

with existing contractual obligations, including those with owner-operators utilized by any one or more of the member carriers. This is the essence of the business plan offered by the Coalition. There is nothing to suggest or support the speculative conclusion that its implementation will somehow harm "owner-operators." In fact, the reality to access additional loads through Coalition members will enhance, rather than diminish, the ability of drivers to earn more revenue.

The IBT also questions how the Coalition will function as an entity. Briefly, like most similar business structures, the Coalition, as a limited liability company, is not required to have officers in the sense that corporations do. Instead, and consistent with the Operating Agreement, the Coalition members have mutually established an Executive Committee consisting of five of the companies who report to all of the other owners. There is nothing wrong or strange about such an arrangement.

The fact that counsel for one of the members undertook to complete the process to create the LLC entity which uses the address of that particular company for convenience does not support, as the IBT suggests, the notion that there is undue influence or control by one operator over the others. In fact, as the Operating Agreement makes perfectly clear, each member has an equal ownership interest in the LLC.

The IBT's attempt to discredit the Application's "market share" analysis is equally flawed and misleading. The IBT does not dispute that as a class, the participating carriers are small to mid-sized companies in the port areas. Together, the members have available a combined inventory of 626 clean trucks. (Application, pg. 9) By contrast, as shown on the IBT's Exhibit A, Swift Transportation alone operates 724 such units. From a purely numerical basis, the member carriers constitute only ten (10) of the six hundred and seventy-two (672) LMCs (as reported by the Port of Long Beach) operating port-wide.

The IBT's attempt to challenge the conclusion that, collectively, the member carriers represent ten percent (10%) or more of the overall trucking activity at the two ports relies solely on a one-month survey (June) by the Port of Los Angeles. This argument is disingenuous given that the Application is, as emphasized throughout, based on a market territory defined by the combined level of container moves within both the Ports of Los Angeles and Long Beach. Accordingly, when viewed from this overall service perspective, the volume representations set forth in the Application are entirely accurate and consistent with the experience of the member carriers as reported therein. For example, the Ports of Los Angeles and Long Beach both contract with Tetra Tech, a private consultant, to monitor and prepare all of the relevant inbound and outbound trucking statistics related to the combined service territory encompassed within the Clean Truck Program. The last report by Tetra Tech that reflected activity at both ports pertained to the month of May, 2009,² prior to the filing of the Application. The results of the survey for this period show:

	<u>MAY 2009</u>		
	Port of Los Angeles	Port of Long Beach	TOTAL
Top 20 LMCs moves	64,222	41,415	105,637
CTC Members in Top 20 moves	<u>15,924</u>	<u>6,384</u>	<u>22,308</u>
Total Moves	158,300	110,667	268,967

As is readily apparent, based on the Total Moves, the portion of the container moves attributable to six (6) of the Coalition members in the "Top 20" category is ten percent (10%) for Los Angeles and slightly less than six percent (6%) for Long Beach, for a combined overall percentage of eight and three tenths percent (8.3%). Those member

² See copies of the Tetra Tech summaries which are attached as Appendix 2 (Port of Los Angeles) and Appendix 3 (Port of Long Beach).

carriers who are not in the "Top 20" account for a de minimus amount of container moves port-wide and their volume would not significantly impact this analysis. These numbers are representative of overall monthly activity, realizing that there are fluctuations in monthly volume depending on any number of seasonal and operational factors. The projections in the Application are accurate and sustainable.

The IBT further speculates that as the Program evolves and "dirty trucks" are removed from equipment fleets of other carriers, the market share of the operators will expand. This is not necessarily the case. In fact, the opposite is true. The participating carriers invested early in the Clean Truck Program. As a result, the current fleets of the participating carriers naturally have a higher percentage of clean trucks, as compared to those other carriers who predominately operate dirty trucks. As these competing carriers convert to clean trucks to meet restrictions which take effect at the end of the year and beyond, the universe of clean trucks will necessarily grow. At the same time, the percentage of such vehicles operated by the member carriers will correspondingly decrease as the transformation by non-members to clean trucks takes place and is effectuated. While other carriers must invest in new, clean vehicles, the member carriers have already incurred the related capital costs for their own inventory of clean trucks and the pooling of this equipment between them will obviate the need to purchase additional units.

Finally, the member carriers properly anticipate the possibility that other carriers may want to join the Coalition subject to the conditions expressed in the Application and the Operating Agreement. It is prudent to think in terms of possible expansion. However, any such decision in the future will be discretionary between the participating carriers and, ultimately, subject to applicable law, including proper notice to and approval by this Board. There is nothing anti-competitive by the possible change in the overall membership of the Coalition at some unknown time in the future.

III.

CONCLUSION

Both of the comments filed herein are based on mere speculation to advance a cause not germane or relevant to the purposes of the Application and the Board's consideration of same under the parameters of Section 14302. Accordingly, each is not entitled to any weight and, certainly should not be used to needlessly impede the speedy approval of the subject Application.

Respectfully submitted,



Attorneys for the Applicants,
CLEAN TRUCK COALITION, LLC
James A. Calderwood, Esq.
Jonathon H. Foglia, Esq.
Zuckert, Scoutt & Rasenberger, LLP

CERTIFICATE OF SERVICE

I, Jonathon H. Foglia, hereby certify that on this, the 3rd day of August, 2009, a true and accurate copy of the foregoing document entitled, "**REPLY TO PUBLIC COMMENTS TO POOLING APPLICATION FILED PURSUANT TO 49 U.S.C. SECTION 14302,**" was served on the following parties, by First Class mail, postage prepaid:

Michael T. Manley
International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001

Ernesto Jesus Nevarez
52041 Panorama Drive
Morongo Valley, CA 92256



Jonathon H. Foglia, Esq.

APPENDIX 1



Motor Carrier Details

USDOT:	608492	MC250680
Company Name:	SOUTHERN COUNTIES EXPRESS, INC.	
Business Address:	Business Telephone:	Mail Address:
18020 S SANTA FE AVE RANCHO DOMINGUEZ CA 90220	(310) 900-2160 Fax: (310) 605-6755	
Authority Type:	Authority Status:	
Commercial	ACTIVE	
Contract	ACTIVE	
Private	NONE	
Household Goods:	YES	NO
Insurance Type:	Insurance Required:	
BIPD	\$1,000,000	
Cargo	YES	
Other	NO	

BQC3: YES
 Broker Company: SERVICE OF PROCESS AGENTS, INC.
 Web Site Content and BQC3 Information Classification

[Active/Pending Insurance](#) | [Rejected Insurance](#) | [Insurance History](#) | [Authority History](#) | [Position Application](#) | [BQ](#)

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U.S. Department of Transportation - Federal Motor Carrier Safety Administration

Regards,
 Gina Fisher
 Executive Assistant



Ask us about our Green Fleet!!!!
Southern Counties Express, Inc.
 18020 South Santa Fe Avenue
 Rancho Dominguez, CA 90220

Tel: (310) 900 - 2160
 Fax: (310) 605 - 6755
<http://www.scexpress.com/>
 Email: gfisher@scexpress.com

Please consider the environment - do you really need to print this email?

Good stuff.

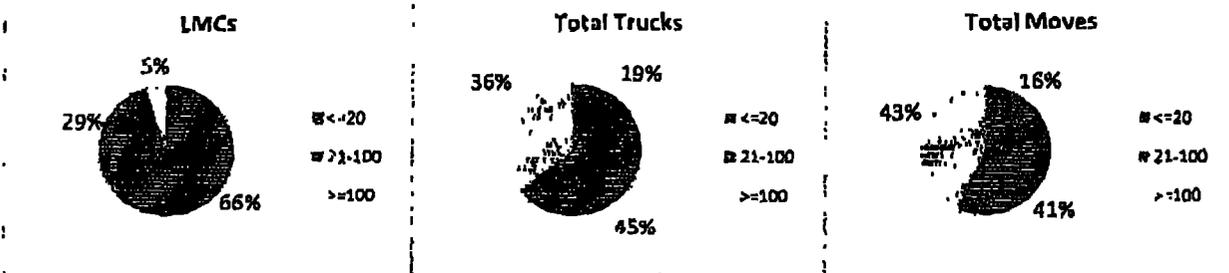


APPENDIX 2



Total Cargo Moves by Fleet Size

Fleet Size	LMCs	Total Trucks/Active Total Trucks	Total Moves	Moves per Truck	Trucks Per LMC	Moves Per Truck Per LMC
<=20	449	3664	28694	7.83	8.16	0.017
21-100	198	8721	72236	8.28	44.05	0.042
>=100	34	6908	76990	11.15	203.18	0.378
Total	681	19293/8138	177920	9.22	28.33	0.014



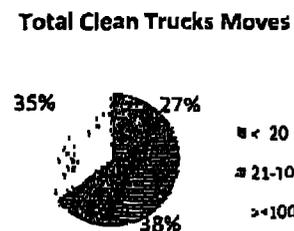
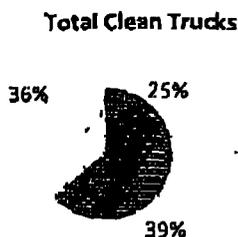
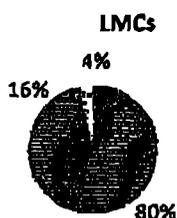
Top Cargo Moves by LMCs

Company Name	Total Moves	Truck Fleet	Total Moves per Truck Fleet
1 CALIFORNIA MULTIMODAL LLC	9487	602	15.76
2 CONTAINERFREIGHT EIT LLC	6534	266	24.56
3 HUDD TRANSPORTATION	5986	372	16.09
4 PACIFIC NINE (9) TRANSPORTATION INC	5126	276	18.57
5 K & R TRANSPORTATION LLC	3983	191	20.85
6 FARGO TRUCKING COMPANY INC	3571	169	21.13
7 TRADELINK TRANSPORT INC	3315	60	55.25
8 LAND TRUCK INC	2783	126	22.09
9 OVERSEAS FREIGHT INC	2529	102	24.79
10 TOTAL TRANSPORTATION SERVICES INC	2526	109	23.17
11 STERLING EXPRESS SERVICES INC	2510	101	24.85
12 WESTERN FREIGHT CARRIER	2504	189	13.25
13 LINCOLN TRANSPORTATION SERVICES INC	2483	167	14.87
14 HARBOR EXPRESS INC	2314	271	8.54
15 SEA-LOGIX LLC	2232	104	21.46
16 SWIFT TRANSPORTATION COMPANY INC	2185	724	3.02
17 FOX TRANSPORTATION INC	2164	127	17.04
18 HARBOR RAIL TRANSPORT	2129	253	8.42
19 KNIGHT TRANSPORTATION INC	1939	188	10.31
20 GREEN FLEET SYSTEMS LLC	1840	78	23.59

APPENDIX 3



Clean Truck Cargo Moves						
Fleet Size	LMCs	Total Clean Trucks/Active Clean Trucks	Total Clean Trucks Moves	Clean Truck Moves per Clean Truck	Clean Trucks Per LMC	Moves Per Truck Per LMC
<=20	211	1250	27732	22.19	5.92	0.105
21-100	43	1971	39554	20.07	45.84	0.467
>=100	9	1824	36846	20.20	202.67	2.245
Total	263	5045/3284	104132	20.64	19.18	0.078



Top Clean Truck Cargo Moves by LMCs				
Rank	CompanyName	Clean Truck Moves	Clean Truck Fleet	Clean Truck Moves per Clean Truck Fleet
1	CALIFORNIA MULTIMODAL LLC	8536	176	48.50
2	CONTAINERFREIGHT EIT LLC	6278	136	46.16
3	HUDD TRANSPORTATION	5009	143	35.03
4	PACIFIC NINE (9) TRANSPORTATION IN	4639	111	41.79
5	K & R TRANSPORTATION LLC	3715	116	32.03
6	FARGO TRUCKING COMPANY INC	3411	85	40.13
7	TRADELINK TRANSPORT INC	3033	34	89.21
8	TOTAL TRANSPORTATION SERVICES IN	2526	107	23.61
9	SEA-LOGIX LLC	2232	60	37.20
10	LINCOLN TRANSPORTATION SERVICES	2186	63	34.70
11	SWIFT TRANSPORTATION COMPANY IN	2185	724	3.02
12	FOX TRANSPORTATION INC	2091	62	33.73
13	HARBOR RAIL TRANSPORT	2019	123	16.41
14	LAND TRUCK INC	1954	20	97.70
15	KNIGHT TRANSPORTATION INC	1939	188	10.31
16	WESTERN FREIGHT CARRIER	1937	50	38.74
17	GREEN FLEET SYSTEMS LLC	1766	50	35.32
18	HARBOR EXPRESS INC	1556	29	53.66
19	OVERSEAS FREIGHT INC	1550	33	46.97
20	CONTAINER CONNECTION OF SOUTHE	1287	89	14.46

