



Executive Director's
Report to the
Board of Harbor Commissioners

DATE: MARCH 22, 2021

FROM: CARGO MARKETING

SUBJECT: RESOLUTION NO. _____ - APPROVE PERMANENT ORDER TO AMEND PORT OF LOS ANGELES TARIFF NO. 4, SECTION TWENTY-THREE, "INCENTIVES - GENERAL RULES AND REGULATIONS", ITEM NO 2325, "OCEAN COMMON CARRIER INCENTIVE PROGRAM" REMOVING THE QUALIFYING YEAR ELIGIBILITY REQUIREMENT

SUMMARY:

Staff requests approval of an amendment (Amendment) to Port of Los Angeles (Port) Tariff No. 4 (Tariff) Section Twenty-Three, "Incentives - General Rules and Regulations", Item No. 2325 "Ocean Common Carrier Incentive Program." The proposed amendment would remove the qualifying year as an eligibility requirement from the Ocean Common Carrier (OCC) Incentive Program effective April 1, 2021. The COVID-19 global pandemic has caused unexpected and erratic trading patterns impacting container volumes beyond the control of OCCs. Removing the qualifying year requirement would adjust the program in response to the unforeseen COVID-related decrease in container volume during Fiscal Year (FY)2020 and incentivize OCCs to drive future container volumes through the Port. The program will continue to provide eligible OCCs with a financial incentive that could amount to \$10.00 per incremental Twenty-foot Equivalent Units (TEU) and a maximum payout of \$2,000,000 per OCC per Incentive Period as stated in Tariff No. 4 Item No. 2325.

Payouts to OCCs earned under the terms of the proposed OCC Incentive Program are the financial responsibility of the Harbor Department.

RECOMMENDATIONS:

It is recommended that the Board of Harbor Commissioners:

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;
2. Approve the amendment to Port of Los Angeles Tariff No. 4 revising Section Twenty-Three, "Incentives - General Rules and Regulations", Item No. 2325 "Ocean Common Carrier Incentive Program", subject to the California Association of Port Authorities'

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review and approval, and authorize the Executive Director to work with the California Association of Port Authorities to secure this approval or proceed to take independent action in accordance with the California Association of Port Authorities' procedure;

3. Adopt Permanent Order No. _____ to amend Port of Los Angeles Tariff No. 4, Section Twenty-Three, "Incentives - General Rules and Regulations", Item No. 2325 "Ocean Common Carrier Incentive Program";
4. Direct the Board Secretary to transmit to the City Council for approval the Permanent Order and the Ordinance approving and authorizing the Amendments to Port of Los Angeles Tariff No. 4 pursuant to City Charter 653(a);
5. The Board Secretary shall certify to the adoption of this Order by the Board of Harbor Commissioners and shall cause the same to be published in a daily newspaper printed and published in the City of Los Angeles;
6. After the effective date of the Ordinance, transmit the Permanent Order and Ordinance to the Executive Director or his nominee for implementation and posting to the Port of Los Angeles website as regulated by the Federal Maritime Commission; and
7. Adopt Resolution No. _____.

DISCUSSION:

Background and Context

On August 23, 2018, the Board approved the OCC Incentive Program, effective September 1, 2018, allowing eligible OCCs to receive a \$10.00 per TEU financial incentive on incremental loaded and empty TEUs, which exceed Transpacific growth. Currently, in order for an OCC to be eligible to receive a payout under the OCC Incentive Program, that OCC must meet certain administrative and data transmission requirements. After these administrative and data transmission requirements are met, an OCC must also meet certain performance criteria. As part of this performance criteria, an OCC's Incentive Year (current year) performance is evaluated relative to its Baseline Year (1 year prior) and Qualifying Year (2 years prior) thresholds to determine payout eligibility. Lastly, Qualifying Year container volumes must be greater than zero.

For instance, in order for an OCC's performance in the FY 2021 Incentive Year to be eligible for a payout under the OCC Incentive Program, that OCC's FY 2021 performance must, at a minimum, exceed its FY 2020 Baseline Year performance **AND** the OCC's FY 2020 Baseline Year performance must exceed its FY 2019 Qualifying Year performance. The inclusion of this performance criteria was intended to provide a financial incentive to OCCs that continuously grew their business through the Port.

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However, following the significant year-over-year decline in global trade observed from January through June 2020 due to the onset of the COVID-19 pandemic, FY 2020 container volumes handled by OCC's, through no fault of their own, likewise declined relative to FY 2019. Now that global trade has rebounded in the second half of calendar year 2020, OCC's have recovered a significant portion of the business lost in the first half of calendar year 2020. Furthermore, from July through December 2020, ten OCC's have grown their business at the Port in excess of Transpacific growth. However, none of these ten OCC's are currently eligible for an incentive payout in FY 2021 because their COVID-19-diminished FY 2020 Baseline Year performance did not exceed their respective FY 2019 Qualifying Year performance.

OCC Incentive Evaluation (September 2018 – June 2020)

During the initial incentive period from September 1, 2018 through June 30, 2019, the Port's cumulative TEU throughput increased by 6.6 percent, or 497,719 TEUs, over the corresponding baseline period and exceeded by 66,412 TEUs the observed 5.7 percent growth in the Transpacific trade. For purposes of calculating incentive payouts, 11 carriers handled 785,738 TEUs in excess of Transpacific growth and earned payouts totaling \$6,221,639 with two OCC's earning the maximum \$2 million payout. The remaining 12 OCC's handled 719,326 TEU below Transpacific growth and did not earn a payout.

During the second incentive period from July 1, 2019 to June 30, 2020, the Port's cumulative TEU throughput decreased by 11.6 percent or 1,123,781 TEUs under the corresponding baseline period. Furthermore, the 11.6 percent decline was a greater decline than the 7.2 percent decline in Transpacific trade observed over that same timeframe. For purposes of calculating incentive payouts, only two OCC's exceeded their Baseline Year FY 2019 cargo volumes (when Transpacific growth is less than zero, an OCC must exceed its prior year volumes) by 127,045 TEUs and earned payouts totaling \$1,270,445. The remaining 23 OCC's who did not qualify for an incentive handled 1,250,826 TEUs less than their respective FY 2019 Baseline Year and did not earn a payout.

Proposed Action

The COVID-19 global pandemic has caused unexpected, and erratic trading patterns impacting container volumes beyond the control of OCCs. The OCC Incentive Program was developed based on normal trading patterns. It did not contemplate a global pandemic. Therefore, staff proposes amending the Tariff to eliminate the Qualifying Year performance provision, effective April 1, 2021. Removing the Qualifying Year performance provision would adjust the program in response to the unforeseen COVID related decrease in container volume during FY2020 and incentivize OCCs to drive future container volumes through the Port. While traditionally OCCs' sailing schedules are pre-

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set months in advance, due to the COVID-19 global pandemic, vessel schedule are more fluid. This Tariff amendment, if approved, will provide an additional incentive to direct container vessels to Port of Los Angeles terminal.

To qualify for this incentive an OCC must have met the annual TEU volume growth requirements by comparing the incentive year volumes to their baseline year volumes. Furthermore, and provided an OCC met the TEU volume growth requirements, the removal of the Qualifying Year provision will only allow an OCC to earn an incentive on TEU delivered to the Port above the Transpacific trade growth percentage from April 1, 2021 onward relative to the baseline period.

Example:

	Qualifying Year TEU Volumes Jul-18 – Jun-19	Baseline Year TEU Volumes Jul-19 – Jun-20	Target TEU Volumes @ 17% TP Growth	Incentive Year TEU Volumes Jul-20 – Jun-21	Incentivized TEU Volumes
July – Mar. – 9 mos.	90,000	75,000	87,750	90,000	0 (BY < QY)
Apr. – Jun. – 3 mos.	30,000 (N/A)	25,000	29,250	30,000	750
12-Mo. Total	120,000	100,000	117,000	120,000	750

As noted within the example above, despite growing TEUs by 20 percent or 3 percent in excess of the 17 percent Transpacific growth rate, from July through March of FY 2021, the depicted OCC would be ineligible for an incentive payout while the Qualifying Year provision is in place. Baseline Period volumes of 75,000 TEUs fell below Qualifying Period volumes of 90,000; therefore, no incentive payout would be due on the first 9 months of FY 2021 activity. However, once the Qualifying Year provision is removed on April 1, the depicted OCC would now be eligible for an incentive payout on the incremental 3 percent Incentive Year TEUs, or 750 TEUs, handled over the final 3 months of FY 2021.

Staff estimates that eliminating the Qualifying Year provision would result in shipping line earned payouts between \$3.5 and \$4.0 million from April 1, 2021 to June 30, 2021.

All other terms and conditions of the current OCC Incentive Program would remain in effect.

Need for Approval

A separate action recommends Board adoption of a Temporary Order within its Los Angeles City Charter authority to approve changes to Tariff No. 4, to be effective for a period not to exceed 90 days. This action for Board and City Council adoption of a Permanent Order (Transmittal 1) and Ordinance (Transmittal 2) are required under the Charter to make changes to Tariff No. 4 (Transmittal 3) beyond the Temporary Order's 90-day effective period.

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ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a Permanent Order to amend Port of Los Angeles Tariff No. 4 OCC Incentive Program, to remove the Qualifying Year provision, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II, Section 2 (f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed Amendment would eliminate the Qualifying Year performance provision associated with the current OCC Incentive Program, effective April 1, 2021. Based upon a proposed effective date of April 1, staff estimates that FY 2021 funding of \$4,000,000 will be required in order to meet anticipated payouts under the amended OCC Incentive Program.

Payouts related to incentivized OCC performance observed from April 1, 2021 through June 30, 2021, will not be recorded until FY 2022 once all container counts are finalized and incentive payout calculations can be completed. Therefore, staff will request that \$4,000,000 be included in the FY 2022 Budget within Account 59961 (Container Incentives), Center 0422, Program 000, subject to Board approval. Funding for future years will be requested as part of the annual budget adoption process, subject to Board approval.

In the event that removal of the Qualifying Year performance provision results in a one percent increase in the Port's TTM Market Share, staff estimates that revenues could increase by \$6,290,000 per year.

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CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the proposed Order and Ordinance as to form and legality.

TRANSMITTALS:

1. Permanent Order
2. Ordinance
3. Tariff No. 4 Section Twenty-Three, Item No. 2325

FIS Approval: MB
CA Approval: SO



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