

January 31, 2020

The Office of the British Columbia Container Trucking Commissioner  
1085 Cambie Street  
Vancouver, British Columbia  
V6B 5L7

**Attention: Michael Crawford**

Dear Mr. Crawford:

**Re: CTS Licence Reform – Submissions related to 2020 Licence Application Process and Tag Management Policy**

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We are writing on behalf of Port Transportation Association (PTA). These submissions have been prepared by our office in consultation with PTA, and are intended to provide the perspective of PTA and its members in relation to the “*CTS Licence Reform – 2020 Licence Application Process and Tag Management Policy*” (hereinafter called the “Proposed Policy”), proposed by your office (hereinafter called “OBCCTC”). These submissions are part of the consultation process related to the Proposed Policy, and PTA remains hopeful that OBCCTC shall consider these submissions in the implementation process related to the Proposed Policy.

PTA has prepared submissions on behalf of its members, in relation to the truck tag management policy review and changes being proposed by OBCCTC, to the licensing scheme for the year 2020.

**PTA**

Port Transportation Association (PTA) is a society duly registered under the *Societies Act* [SBC 2015] Chapter 18 (hereafter called the “Societies Act”). PTA is a member funded society, and its membership consists of container trucking companies, which conduct drayage trucking business under the Truck Licensing System (TLS) of the Vancouver Fraser Port Authority (VFPA), also known as Port Metro Vancouver. PTA has its registered office located at [REDACTED]. At the time of preparing these submissions, PTA has 32 members.

**Proposed 2020 Tag Management Policy**

As indicated in your recently released booklet titled “*CTS Licence Reform – 2020 Licence Application Process and Tag Management Policy*” (hereinafter called the “Proposed Policy”), you have stated that OBCCTC is proposing the following:

- The prohibition of joint licences;
- An increase to the minimum truck requirement for licensees from five to ten;
- The June 2020 licence period be opened to all interested applicants; and

- TLS truck tag requests made by applicants who previously held a Licence be assessed considering historic compliance with the *Container Trucking Act* (hereinafter called the “Act”).

OBCCTC has also stated that the under the new policy it proposes:

- Assignment of either an on-dock (TLS) truck tag or off-dock (CTC) truck tag to each truck under licence that is utilized for container trucking services;
- Prohibition of of “conversion” of truck tags from I/O assigned tags to company fleet assigned tags and vice versa between licence periods;
- Maintenance of the Commissioner’s I/O List;
- Issuance or revocation of TLS truck tags based upon the VFPA performance program; and
- Issuance or revocation of CTC truck tags at the request of licence holders.

OBCCTC has also stated that it shall not charge any fee for the issuance of CTC truck tags.

PTA raises the following concerns about the Proposed Policy; and requests the OBCCTC to consider these concerns seriously, and amend its Proposed Policy accordingly.

### **Call for Applications**

According to the Container Trucking Regulation (“Regulation”), Section 6, the OBCCTC may invite applications for a licence under Section 16(2) of the Container Trucking Act (“Act”), if OBCCTC is satisfied that it is desirable to increase the number of licensees. Section 6 further states that if OBCCTC decides to invite applications, then the Commissioner must determine the period during which applications for licence will be accepted; any mandatory requirements for a licence the Commissioner considers appropriate; and any desirable criteria the Commissioner considers relevant to determine whether, and to whom, to issue a licence.

The Proposed Policy does not outline a proper basis for OBCCTCs decision to invite applications for licence. The Proposed Policy does not explain why and how the OBCCTC has identified the need to increase the number of licensees, and what the proposed number of licenses to be issued are going to be.

Furthermore, the existing Licensees cannot be asked to apply all over again. As per the Regulation, any such invitation be made only to new applicants competing for any increased number of licenses that the OBCCTC has determined under section 6 of Regulation.

As an association representing drayage trucking companies, it is important that PTAs members are made aware of reasoning behind the call for applications under the Proposed Policy; and it is important that the OBCCTC informs the applicants in advance about the number of licences OBCCTC intends to issue under the Proposed Policy.

In the past, trucking companies have experienced issues with the terminals operating on VFPA properties, including management of trucks entering such terminals. As an association, whose members face these issues on a regular basis, we state that the number of licences should remain the same, as any increase in the number of licensees will adversely affect the ability of the terminals to deal with the trucks entering and exiting the said terminals, and is going to increase the congestion/wait times at the terminals (an issue which is briefly mentioned in the Proposed Policy, but for a different reason).

It is highly surprising that in the Proposed Policy, OBCCTC has stated that the *“proposed new licencing criteria is designed to meet the OBCCTC’s goals of achieving an efficient, stable, financially and logistically competitive drayage supply chain in the Lower Mainland. The OBCCTC’s (sic) goal is to balance the number of TLS tagged trucks with the amount of available on-dock container trucking services...”*, but OBCCTC has failed to determine the number of truck tags that are to be issued under the Proposed Policy, while at the same time inviting new applicants to compete with the existing trucking companies.

Along with the concerns raised above, PTA continues to maintain that the OBCCTCs call for applications under the Proposed Policy is flawed, and outside the scope of powers of the OBCCTC outlined in the Act and the Regulation. The Proposed Policy is in violation of the provisions of the Act and the Regulation.

The PTA requests the OBCCTC to not proceed with the Proposed Policy and to cancel it. The Proposed Policy is intended to adversely affect the interests of a significant number of licensees, and drivers and owner operators working for such licensees.

### **Eligibility criteria - Minimum Number of Trucks and Joint Licences**

In the Mandatory Criteria, OBCCTC has stated that any applicant applying under the Proposed Policy must have at least ten trucks, either company-owned and/or sponsored that are eligible to receive a truck tag.

There is no explanation provided why the minimum requirement of an applicant to apply under the Proposed Policy is being changed from the existing minimum requirement of five trucks to ten trucks.

As an association representing interests of small to medium range trucking companies, it is extremely important for PTA to protect the interests of its members, who stand to lose their livelihood, as a result of this change. Furthermore, the OBCCTC has proposed canceling the existing policy of Joint Licences, wherein companies could “join hands” and apply for licences as Joint Licensees

There is no cogent explanation for such an increase in the minimum number of trucks required for an existing licensee to apply for licence under the Proposed Policy. The Container Trucking Regulation requires the OBCCTC to impose mandatory requirements that the Commissioner “considers appropriate” for issuance of a licence. The Proposed Policy does not explain at all, as to why the Commissioner considers it appropriate to prevent already existing licensees meeting the current criteria for licensing to be excluded from applying for licences. OBCCTC, by implementing such a drastic criteria is adversely affecting the livelihood of small trucking companies. This mandatory requirement is without any valid reason and is extremely drastic. It is proposed solely for the purposes of preventing a small company for earning a livelihood. PTA strongly opposes such a criteria, and requests the OBCCTC to reconsider it, and revert this criteria to the currently existing one, requiring a minimum of five trucks.

Furthermore, keeping in mind the policy constraints that prevent current licensees from merging with or changing their business structure, the Proposed Policy further discriminates against existing Licensees. Unlike existing Licensees, who have to seek prior approvals from the OBCCTC to change their corporate structure or merge or amalgamate with another Licensee, and are forced to face stringent restrictions and scrutiny from the OBCCTC in this regard, a new applicant is free to enter into any business association with another new applicant, before applying for licenses under the Proposed Policy. For example two new applicants with 5 trucks each, can form a joint-venture, or can amalgamate or merge prior to applying for a licence, without any scrutiny or restrictions, whereas, two similarly placed licensees would be unable to do so, without putting forth an application to the OBCCTC and seeking permission from it, which could also be denied.

We maintain that such an arbitrary increase in the minimum number of trucks required to participate in the new application process, is in breach of the Act and the Regulation, and is outside the scope of the powers bestowed upon the OBCCTC.

The Proposed Policy states that OBCCTC would not accept any applications made by Joint Licensees. Again, there is no basis provided at all by OBCCTC for proposing the said restriction as mandatory Criteria.

By imposing this restriction and requiring all licensees to have at least ten trucks, the OBCCTC is preventing existing Licensees with fewer than ten trucks from participating in the licensing process. The OBCCTC is functionally revoking their licenses without providing any reasons why, or providing them an opportunity to be heard, this action is unreasonable and punitive.

PTA states that such Proposed Policy relating to this issue, is uncalled for, baseless, and a breach of certain Trucking Companies’ rights to procedural fairness.

## **Application Processing**

In the Proposed Policy, the OBCCTC has stated that from May 1 to June 10, 2020, the applications will be reviewed and assessed as they are received; and conditional approvals will be issued to successful applicants as they are processed. The OBCCTC has not explained as to why this approach of “first come first serve” is being adopted. This approach is not only unfair, but also against the legislative provisions governing the processing of applications.

Section 9 of the Regulation states that if the period of submitting applications for a licence has expired and one or more applicants have met the requirements for obtaining a licence, then the Commissioner may, after reviewing all the desirable criteria, either issue a licence to all the applicants that have met the requirements; issue a licence to one or more applicants that have met the criteria and according to the Commissioner have best met the desirable criteria; or refuse to issue any licence.

It is clear from Section 9 of the Regulation that the OBCCTC cannot issue licenses on a first come first serve basis. The OBCCTC has to wait for the time period allotted for accepting the applications to expire and then proceed with issuance of licence. Section 9 further gives the OBCCTC the discretion to issue licences to all the applicants meeting the mandatory requirements.

The Association, therefore, informs the OBCCTC that it is very important that the OBCCTC follows the procedure laid out in the Act and the Regulations in renewing the licences or issuing new licences. The current proposed processing in the Proposed Policy is not in compliance with the legislation that empowers the OBCCTC.

## **Additional Criteria**

Amongst the additional criteria listed in the Proposed Policy, is the “Compliance History” of an Applicant. The Proposed Policy states that compliance record shall be considered on following standards:

*No Decision Issued: Good*

*Decision Issued No Penalty: Average*

*Decision Issued with Penalty: Poor*

PTA states that this manner of evaluation is unfair and arbitrary. Firstly, this is placing applicants at par with each other, irrespective of the amounts of penalties imposed and paid by them. For example, an applicant which has paid \$5,000.00 as penalty, is being given the same rating as someone who has paid \$10,000.00 or \$60,000.00 as penalties.

Also, the OBCCTC is using a company's past record, for which it has already been penalized, to now face a dire consequence of revocation of its licence under the Proposed Policy. PTA is of the opinion that this manner of evaluation is further punishing licencees, who have already been penalized as is allowed under the Act and the Regulation, and who have paid the penalties. To be once again penalized for instances for which reparations have been made is outside the scope of the powers of the OBCCTC. The OBCCTC has the power to revoke licences under the Act and the Regulation. If the OBCCTC found it fit not to revoke a licencee's licence in the past, then this form of evaluation is in the form of punishment for an error or omission under the Act or the Regulation, which has already been remedied, and is therefore unreasonable and outside the scope of what is contemplated by the Act

PTA, therefore, states that this method of evaluation is unfair, punitive, arbitrary, and abusive, and contrary to the legislative provisions and principles, and should not be implemented.

The Proposed Policy also states that an applicant's business plan shall also be considered to determine the number of truck tags to be issued to an applicant. This condition is again unfair and outside the scope of the legislative powers of the OBCCTC. This condition amounts to an amendment of licence under Section 19 of the Act, and such an amendment can be made only after the licencee is given an opportunity to be heard.

### **CTC Tag Requirements**

In the Proposed Policy, the OBCCTC has suggested the implementation of a "CTC Licence" for off-dock work, for enforcement under the Act. It is the position of PTA that the implementation of the requirement of a CTC licence for off-dock work will be detrimental to both its members and the truckers. Section 16 (1) of the Act requires a person must not carry out prescribed container trucking services in a prescribed area without a licence. According to the Regulation, the "prescribed container trucking services" for the purposes of 16(1) of the Act are defined in section 2 of the Regulation as container trucking services that require access to a marine terminal.

In the Regulation and the Proposed Policy, the TLS licence is distinguished from the CTS licence in large part on the fact that TLS licenced trucks require access to a marine terminal, whereas off-dock trips do not. Therefore, a company performing off-dock trips, that did not otherwise require a licence, are not subject to the act and therefore would not be required to tag trucks doing off-dock work. Requiring CTC tags is, therefore, outside the scope of the powers afforded to the OBCCTC under the Act.

Further, and in the alternative, the said CTC Licence requirement would create a two-tiered system of off-dock work, wherein licencee's off-dock work would be subject to OBCCTC oversight, and unlicensed companies' would not. It is the position of PTA that the implementation of a CTC tag requirement would be detrimental to both drivers and Licencees.

## **Term of Licence**

Without conceding its position on the Proposed Policy, the PTA states that the term of licenses issued to container trucking companies be increased from two to three years and up to five years. This will result in bringing more stability to the TLS, and shall allow the licencees to conduct their businesses with long term goals and will allow licencees to operate in a more cost effective and growth oriented manner. For example, increased forward-looking stability may allow licencees to take on longer yard leases, or make them more attractive to leaders and investors. Keeping in mind that the oversight powers of the OBCCTC shall remain intact, this increase in term of licence will not have any adverse impact on the role of the OBCCTC, and in fact would be beneficial for the drivers and owner-operators, for whose benefit the Act and the Regulation were legislated.

## **Overall Position**

The overall position of PTA is that the Proposed Policy is outside the scope of powers of the OBCCTC, and should not be implemented. It is not only in breach of the legislation governing the OBCCTC, but is also unfair, and discriminatory. It threatens to revoke licences of current licencees without and legislative or legal basis, and is an attempt to illegally oust already existing licencees.

PTA states that implementation of the Proposed Policy shall be extremely harmful to the drayage trucking sector, and will force a number of small to medium sized trucking companies out of business. At the outset, the criteria of increasing the minimum number of trucks required from the existing criteria of five trucks to ten trucks, coupled with disallowing of joint applicants, smacks of an intention to remove small licencees from the TLS. The effect of the Proposed Policy appears arbitrary and unreasonably prejudicial to companies with fewer than ten trucks.

Furthermore, the Proposed Policy does not explain the basis upon which the Proposed Policy has been drafted. It does not explain as to how, the implementation of the Proposed Policy will balance the number of trucks with the volume of container movements. As per the Proposed Policy the OBCCTC is yet to determine the number of truck tags that it intends to issue under the Proposed Policy. It is ironic that the OBCCTC has drafted the Proposed Policy without first identifying the number of truck tags to be issued under the TLS.

The Proposed Policy is completely silent as to how the OBCCTC expects that its implementation is going to affect the drivers and owner operators, whose interests are paramount under the Act and the Regulation, and for whose benefit the OBCCTC was set up. The Proposed Policy is bereft of any explanation as to how the OBCCTC intends to protect the large scale loss of employment of drivers and owner operators, which will be a direct result of the ousting of existing licencees, including the ones, with fewer than ten trucks, who will be prevented from even participating under the Proposed Policy.

The Proposed Policy fails to explain or even deal with the issues of loss of seniority for drivers and owner operators who shall be rendered jobless. Nor does it explain how the OBCCTC intends to compensate current licencees, for significant economic losses that they will suffer as a consequence of the implementation of the Proposed Policy.

It is the PTAs position that contrary to the assertions of the OBCCTC, the Proposed Policy is designed to benefit a few large licencees, at the expense of smaller licencees. It is arbitrary, unlawful, and amounts to an abuse of power of the OBCCTC.

PTA strongly disapproves of the Proposed Policy, and requests the OBCCTC to not implement it.

### **Feedback**

PTA requests a meeting with the OBCCTC to discuss the Proposed Policy. It also requests that the OBCCTC address all the concerns raised in these submissions, and provide a detailed response accordingly. PTA further states that keeping in mind the serious economic consequences arising out of the implementation of the Proposed Policy, if the OBCCTC intends to implement the Proposed Policy, then the OBCCTC at least owes a duty to the existing licencees, to explain in detail as to why it does not consider the Proposed Policy to be unfair, and why the OBCCTC considers that it has the authority and legislative basis to implement the Proposed Policy, and how it is beneficial to the TLS.

Finally, PTA states that the Proposed Policy is contrary to the mandate of the OBCCTC. It expresses its serious concerns to the OBCCTC that implementation of the Proposed Policy will result in disruption of the TLS, and will have a ripple effect, which will result in consequences similar to those, which resulted in the creation of the OBCCTC.

We look forward to hearing from you.

Thank you.

Yours truly,

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