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August 31, 2021

Via email: registrar@obccctc.ca

Michael Crawford
BC Container Trucking Commissioner
1085 Cambie Street
Vancouver, BC
V6B 5L7

Dear Mr. Crawford:

Re: Unifor Response to Off-Dock Drayage Reform
CTS License and Rate Order Amendments

As you are aware, Unifor represents the largest number of unionized container truckers operating in the lower mainland with certifications under both the BC *Labour Relations Code* and the *Canada Labour Code*.

Unifor welcomes the opportunity to submit our views in response to the July 5, 2021 call by your office for submissions relating to opportunities to make targeted adjustments to the Commissioner's rates, policy and the *Container Trucking Regulation* (the "Regulation") to "ensure fair and equitable working conditions that support a stable, efficient and competitive Lower Mainland container trucking sector." We have also received your invitation for a virtual consultation and have responded under separate cover.

CTS Licence Amendments

No Expansion of Licensees or Overall Fleet Size

We maintain Unifor's long-standing position that the total number of CTS Licensees should not increase as a result of expanded off dock enforcement. The number of trucks should also not be expanded unless and until it is conclusively shown that all trucks in the fleet are fully utilized over a significant period of time. All off dock work should only go to currently licensed companies, all drivers within those companies should be fully utilized,

and licensees should be required to use each other for overflow on dock or off dock work, if any.

Support for Broad Scope of Off Dock Enforcement

In line with this position, we agree with the proposed amendment to the CTS License to prohibit the Licence Holder from contracting with unrelated, unlicensed persons for the provision of container trucking services.

Awarding new licensees to those who participated in the unregulated off dock movements would simply reward those who helped to undermine the system. Many current Licensees actively participated working with these companies and they should absolutely not be rewarded for their behaviour with additional tags and ability to work with “affiliate” companies.

The proposal also correctly raises the concern that License Holders may attempt to circumvent the Commissioner’s rates by entering into contracts for container trucking services with unrelated or unlicensed persons and reduce the reliance on existing licence holders that provide overflow services.

Concurrently, we believe that there should be swift and comprehensive enforcement as outlined under the Act to punish offenders who are not licensees if they are found to be conducting container trucking services captured by the *Container Truck Act* (‘the Act’) and *Regulation*, whether or not they can be shown to be affiliated or related. Section 42 of the *Container Trucking Act* makes it an offence with fines up to \$10,000 for a person to hold themselves out as a licensee or a trucker authorized to carry out container trucking services to or on behalf of a licensee. Once it is clear that any movement of defined containers within the prescribed area is covered under this section, enforcement can begin. If the OBCCTC budget needs to be increased to allow for enforcement in this manner, additional funds should be allocated as required.

Provided all on dock and off-dock container trucking services captured by the *Act and Regulation* are performed only by CTS Licensees, we agree with the requirement to ensure a written contract to guarantee Commissioner’s rates (and associated practises, policies, and definitions of specific types of moves, etc.) and to allow audits.

Opposition to Divided Fleets

Unifor strongly opposes the introduction of lower standards or the creation of an “off dock only” fleet. The idea of sub-dividing fleets per Licensee into those truckers able to service on dock work and those truckers who do not require a port pass (and therefore the associated higher standards associated with obtaining such a pass) to perform off dock work is a recipe for industrial chaos and is simply unfair and unwarranted.

Whether the term is “truck tag” or something else, every Licensee should disclose every truck working for it (as permitted by the Commissioner within the overall static fleet) and

all trucks under the CTS system should qualify for a port pass and be interchangeable in relation to on dock or off dock work within the prescribed area.

Licensees who are unionized have the ability to negotiate where new trucks and drivers will be placed within the overall fleet and to discuss reasonable rules for dispatch. Truckers working for non-union companies who have invested in their trucks and qualified for port passes do not have this protection and could be forced to accept less work or less preferable work while new trucks that are not port pass eligible perform more and more off dock work.

We have been raising these concerns about a shadow fleet for years – truckers are increasingly angry that their calls for action have taken so long to see fixed as they have been losing work to unregulated shadow fleets that have grown in many cases in direct complicity with TLS Licensees. In hopefully finally fixing this problem, it would be asinine to reward these shadow fleet companies and their Licensee enablers by adding new licenses or adding large amounts of trucks with different standards.

It is not enough to say that the remaining tagged trucks with access to the port can also do off dock work because these trucks would likely be forced to do mainly on dock work in non union workplaces. Drivers generally prefer off dock work to on dock work and creating two tiers of drivers is a receipt for disaster; if this happens across the system, the outrage will almost immediately threaten stability.

The off dock work was captured after 2014 and it started to bleed away from the CTS Licensees over a period of years while the overall fleet has remained stable. The fleet was able to service the work before and it will be able to do so in the future without drastic expansion.

Greater transparency and rules around only using other CTS Licensees for container trucking services will help ensure that overflow work can be handled by other licensees in a regulated market instead of bleeding out to unregulated lower rates and conditions. In addition, the Commissioner's methods of evaluating proposals for new tags and removal of tags can be further refined to ensure they are careful and prudent going forward instead of large scale authorization of new trucks and/or tags.

Independent Operator Hourly Rates

No Driver Should Move Backwards

As a starting point on any discussion about rates or changes to rates, Unifor has consistently maintained that no driver should move backwards in compensation.

Drivers have fought long and hard to establish, maintain, and help to enforce an important system of on and off dock rates, fuel surcharges, minimum rates, and much more. We will not repeat all of the reports that outlined the catastrophic effects of undercutting and not listening to drivers concerns. Eventually, large scale disputes erupt and drivers become desperate when they see their conditions deteriorate while costs increase.

Therefore, we believe any consideration of replacing the currently trip rate system with mandatory hourly independent operator ('I/O') rates should clearly say that these rates are intended to and will meet or exceed the compensation currently received by trip rate owner operators across the entire system for every driver.

The Commissioner's office already has the ability to determine whether or not compensation paid to drivers meets or exceeds the minimum terms and it should be no different here with a move to eliminate trip rates and/or the PMR rate.

No driver should move backways in the application of an hourly rate and they should receive equivalent compensation if they can show they are losing revenue as a result.

Hourly Rate Projection Outdated and Not Based on Actual Compensation

Having raised those important points at the outset, we can offer the following comments on some of the preliminary calculations and hourly I/O rate proposed by the Commissioner.

The fixed and variable costs provided by the Commissioner are based not on actual costs in 2021 but on estimated costs from 2018. The rate proposed by the Commissioner also does not focus on total compensation earned by each driver (after costs) divided by their hours worked to determine what actually occurs. The Commissioner's office has or can request this actual data from Licensees and we believe it should be reviewed first instead of moving forward with speculative suggestions about assumed rates.

We note that the *Container Trucking Act and Regulation Review Rate Structure Study* (that the Commissioner is using to justify the proposed starting rate of \$70.00 per hour for independent operators) also noted a preference for using actual data. Recommendation #9 in that report suggested that a rate review should be performed every 2 years and should also involve "updating the owner operator cost model, facility inventory, trip times and distances, and marine terminal wait times."¹

This report also estimated fixed costs for independent operators at \$201 per day with variable costs at \$0.74 per kilometre and of course these costs have changed also since then. The rate structure study also clearly noted that

The fixed and variable costs in the owner operator model should be updated based on an analysis of actual owner operator costs if possible. Alternatively, these costs can be updated based on owner operator surveys, external benchmarks, or indices such as CPI. The trip costing exercise can be repeated with updated facility locations and drive times (using electronic log data from drivers if possible.) The take-home pay hourly rate should be based on the employee hourly rate while taking

¹ <https://www2.gov.bc.ca/assets/gov/driving-and-transportation/reports-and-reference/reports-and-studies/planning-strategy-economy/container-trucking-act-and-regulation-report.pdf>

into consideration labour prices in the broader trucking industry and the competitiveness of the Gateway. **(emphasis added)**

We note that there have been changes in costs, facilities, trip times since 2018, and in addition to marine terminal wait times, wait times at many facilities are getting longer and are an increasing source of frustration for drivers.

With the Commissioner's proposed rate of \$70 per hour, this would represent a barely 1% increase from the rate structure study recommended I/O wage of \$69.41 in 2018. As an example of how rates can change since 2018, we note that the rate of remuneration for the current Commissioner Michael Crawford was increased from \$150,000/year to \$155,000/year as of December 1, 2020.², an increase of about 3.35%.

The Commissioner's proposed rate is also stated to be based on assuming that the required employee wage is \$26.96 per hour when today it is \$0.54 cents higher at \$27.50 after 2340 hours worked, and we maintain even that required hourly rate is also outdated.³

Hourly rates should be exclusive of benefits

We also submit again that the I/O rate eventually set should not be inclusive of benefits but exclusive of benefits to allow direct comparisons based purely on hourly rates. Diluting the rates to be inclusive of benefits allows too much wiggle room as costs, enrollment, and availability differs widely not only by company but by driver (single, couple, family coverage as one example). The rates can be maintained and compared across the board without taking into account whether benefits are there or not and how much they cost and ultimately they are a matter for negotiation between drivers and their employers. As an example, a recently negotiated agreement with Harbour Link Containers Services Inc. included payment of \$285 per driver towards a benefit plan and this was done without reducing rates.

Hourly rates should include overtime pay

Finally, we also note that the rate proposed by the Commissioner is based on an assumed ten-hour day. Although Unifor members have the right to insist on a ten-hour day, many drivers work much longer than this and many non-union drivers have no choice but to work all the hours permitted under NSC rules or face termination.

We note that provincially regulated short-haul truck drivers are to be paid time-and-a-half after working nine hours in a day and 45 hours in a week with only the first nine hours in a day count toward the 45 weekly hours. Long haul truck drivers are paid time and a half after working 60 hours in a week but are not entitled to daily overtime. Truck drivers who

² <http://obcctc.ca/wp-content/uploads/2021/06/Tribunal-Disclosure-CTC-FY21.pdf>

³ Ibid, pg. 7

are paid on a day rate, trip rate, commission or other incentive basis are also entitled to overtime and a method for converting day or trip rates is provided for.⁴

Unifor notes that the proposed starting point of the Commissioner's calculation on the hourly rate for independent operators was based on the hourly rate for company drivers. However, those drivers are entitled to overtime. Unifor submits overtime should be payable to the hourly rate for independent operators on the same basis as company drivers.

Determine Hourly Rate Properly on Actual Data and Reasonable Increases

Proceeding to replace the on and off dock trip rates and the PMR rate with a mandatory independent hourly rate without reviewing actual compensation, hours worked, and updated costs would be a mistake.

The "detailed analysis conducted by the Commissioner" is outdated and was not complete in any event because it did not examine actual driver compensation nor actual hours worked, even though the data is available. How can the Commissioner assure drivers that they will not go backwards in compensation when the office has not looked at their actual compensation or hours worked?

Unifor submits that the most appropriate method for calculating an I/O hourly rate would be to transparently review actual compensation, updated actual costs, and actual hours worked. Following such a review based on actual data, an hourly rate including overtime that does not see drivers move backwards can be determined along with increases at least equal to CPI each year.

Company driver rates should also be increased

Although it is not noted in the terms of reference, we maintain that the current hourly rate of \$27.50 after 2340 hours worked is also outdated, should be increased significantly at the very least in line with CPI for each year and should also be calculated to be exclusive of benefits for the reasons cited above.

Widespread non-payment of overtime and holiday pay to company drivers

With respect to company drivers, the Commissioner repeatedly turns a blind eye to overtime violations for company drivers when conducting its audits. Even when it is clear that company drivers are not being properly paid overtime, vacation pay, or statutory holiday pay, the Commissioner and the auditors tell these drivers they must file a separate complaint with the BC Employment Standards Branch to recover their funds owed.

⁴ <https://www2.gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/forms-resources/truck-drivers>

This ridiculous situation has led to widespread non-payment of overtime throughout the system for company drivers who are terrified to file complaints for pay because the violations are so widespread. One agency of the provincial government is auditing an employer, regulating some rates, and turning a blind eye to known violations for *Employment Standards Act* (particularly in relation to compensation) while telling the victim to agency shop to get justice.

This situation must change. We again call for the *Act and Regulation* and/or License to be amended to make it clear that the Commissioner can and will audit and sanction for violations of the BC *Employment Standards Act and Regulation* instead of requiring drivers to approach multiple agencies for justice. We also take note of the Commissioner's approach on electronic logging devices to retain records in harmony with the *Employment Standards* for four years and that harmony should extend across all ESA requirements during an audit.

We submit that Section 13 of the *Regulation* (and/or any other applicable parts of *the Act and/or Regulation* and/or License) should be clearly amended to include vacation pay and overtime premiums, and other *Employment Standards Act* provisions as part of the minimum rates.

Security Requirements and Licence Fees

We agree with the additional security requirements and license fees proposed and believe a flat fee per company and per truck is the best method for calculating those fees.

CTS Licence Electronic Logging Device Requirement

Provided that drivers are not required to pay for or maintain any electronic logging devices and there are appropriate protections against unauthorized use and disclosure of the data, including prohibitions against using these devices for monitoring employees for disciplinary purposes, we do not oppose the introduction of electronic logging devices in CTS Licensed trucks.

CN and CP Trip Rates

We note that the 2018 Rate Review report called for inclusion of the CN and CP zones are part of the on-dock rates if jurisdictional concerns were resolved. We have seen no action on this and again call for the clear terms of the 2014 Joint Action Plan to be upheld on this issue.

Cooperation with PMV and Terminal Operators

We note that the service level agreements with terminal operators (or even a pilot) referenced in the Ready and Bell report are still not implemented and as you noted on page 26 of the 2018 Rate Review Report:

The pilot did not occur and, **since 2015, terminal engagement with the Commissioner has been all but non-existent. The future stability of the Lower Mainland drayage sector depends in large part on the cooperative efforts of all stakeholders.** SLAs between trucking companies and terminal operators are in place at many international ports and there is no reason to suggest that the introduction of SLAs in the Lower Mainland drayage sector would not improve the efficiency of the sector.

Terminal operators have been resistant to engage with the Commissioner and therefore the governments of Canada and British Columbia should consider collaboration on the development of a SLA pilot project which requires the participation of the terminal operators and a sample number of licensees. If, after review, the project is considered successful, consideration should then be given to the introduction of a mandatory SLA program. (emphasis added).

We find that there is little cooperation between the province and the federal government to bring PMV and terminal operators to the table to discuss unavoidable cross jurisdictional issues and we most recently wrote to Minister Alhabra with copies to the Minister Rob Fleming outlining our concerns (attached).

We look forward to continuing our discussion during this consultation process and ultimately resolving the many serious issues facing container truckers.

Please contact us if you require any further information or have any questions or concerns.

Sincerely,



Gavin McGarrigle
Western Regional Director
GM/mrcope343

cc. Mario Santos, Barry Kennedy, National Representatives
Chris Mac Donald, Assistant to the President, Unifor