

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 22-35**

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**M. E. DEY & CO., Inc.**

v.

**HAPAG-LLOYD AG and HAPAG-LLOYD  
(AMERICA) LLC**

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**BUREAU OF ENFORCEMENT, INVESTIGATIONS, AND COMPLIANCE  
MOTION FOR LEAVE TO INTERVENE**

Pursuant to Rule 68(c)(2)(ii) of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.68(c)(2)(ii), the Bureau of Enforcement, Investigations, and Compliance (BEIC) files this motion for leave to intervene in this proceeding. To support this motion, BEIC offers the following:

By Verified Amended Complaint filed on March 1, 2023, M.E. Dey and Co., Inc. (Dey or Complainant), alleges that Respondents Hapag-Lloyd AG and Hapag-Lloyd (America) LLC (Hapag AG and Hapag USA, respectively; collectively, Respondents) violated 46 U.S.C. §§ 41102(c) and 41104(a)(14). The alleged violations stem from Respondents' efforts to collect demurrage and storage fees from Complainant, who had no ability to move the subject cargo during the billed timeframe due to the actions or inactions of the Respondents and/or their subcontractors.

Complainant alleges that Respondents' efforts to collect demurrage and storage fees

from Complainant are unreasonable and therefore in violation of 46 U.S.C. §§ 41102(c) and 41104(a)(14) given that: (1) the initial charges applied to containers which Respondents' subcontractors did not make available for retrieval by the Complainant; (2) Respondent allowed their subcontractor to refuse to release containers until those demurrage charges were paid; and (3) the issued demurrage charges served no incentivizing principle and did not promote freight fluidity. Consequently, Complainant has requested an award of reparations, interest, and attorney fees, the payment of any other amounts the Commission deems appropriate, and other relief the Commission deems appropriate. Respondents filed their Answer to the Amended Complaint on March 27, 2023.

#### DISCUSSION

The presiding officer may permit BEIC to intervene upon a showing that BEIC's expertise is relevant to one or more issues involved in the proceeding and may assist in the consideration of those issues. 46 C.F.R. § 502.68(c)(2)(ii). This proceeding involves alleged violations of the Shipping Act which, if proven, are serious, relevant to new legislation and rulemakings, and have potential widespread consequences for the industry. The complaint alleges that Respondents' efforts to collect demurrage and storage charges from Complainant in a situation where it was impossible for Complainant to move cargo were unreasonable within the meaning of 46 U.S.C. § 41102(c) and 46 C.F.R. § 545.5. If the facts alleged are proven, BEIC would align itself with Complainant's position that Respondent has violated the Shipping Act by engaging in these practices.

Upon information and belief, other shippers may have likewise been subjected to the same or similar practices by Respondent. If Complainant's allegations are proven and are coupled with similar experiences of other parties, such behavior reflects continued and serious violations of the Shipping Act that should be addressed by BEIC and warrant its participation in

this proceeding. BEIC's expertise will facilitate this proceeding through its litigation experience with respect to Shipping Act violations and its familiarity with the institutional context in which the Act is enforced. BEIC's interest and experience will not only assist in developing the interpretation of the Shipping Act post the Ocean Shipping Reform Act of 2022 but will also assist in evaluating the gravity of the alleged violations in this case.

BEIC will further assist in elucidating whether Respondent's actions constitute its normal, customary, and continuous practices pursuant to 46 U.S.C. § 41102(c) and 46 C.F.R. §§ 545.4(d) and 545.5. It will also aid in exploring the implications of all legal arguments and ensuring they will be thoroughly vetted for the presiding ALJ's consideration, even if they are not fully addressed by the Complainant. BEIC does not contemplate addressing the request for reparations or the measure of Complainant's damages but intends to focus its participation on the lawfulness of the Respondents' collection efforts against the Complainant, as well as issues related to enforcement policy and Commission jurisdiction. Within the last several years, the Commission issued an interpretive rule addressing and more fully developing its views with respect to the prohibitions embodied in 46 U.S.C. § 41102(c) governing the failure to establish, observe and enforce just and reasonable regulations and practices. Final Rule: Interpretive Rule, Shipping Act of 1984, 83 Fed. Reg. 64478 (Dec. 17, 2018).

According to the complaint, Respondents' practices and 46 U.S.C. § 41102(c) will be central to this case. According to the Respondents' Answer, they intend to argue their conduct did not violate 46 U.S.C. § 41102(c). Due to the Commission's evolving body of case law, resolution of this issue will likely have ramifications reaching beyond this dispute. As the Commission's enforcement component representing the public interest, it is BEIC's intent to present BEIC's interpretation of the Shipping Act as applied to Respondents' practices, providing a broader perspective than may be expected from the private litigants to the dispute. In

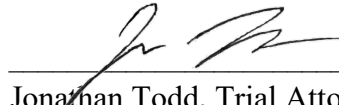
their Answer, Respondents further assert that the Commission lacks both personal jurisdiction and subject matter jurisdiction over them. Given BEIC's role outlined above, BEIC's perspective would also aid in the determination of the scope of FMC's authority to adjudicate this matter.

In accordance with 46 CFR § 502.68(b)(ii), (iii), and (iv), BEIC seeks to participate as a limited party to this proceeding by submitting briefs as necessary – primarily those addressing the application of 46 U.S.C. § 41102(c) to the facts of this case - but reserving the ability to address jurisdictional or other procedural issues. BEIC does not seek to participate in discovery, examination of witnesses, or the presentation of evidence. BEIC's participation and perspective will not unduly delay this proceeding given the limited scope of BEIC's participation as described. Development of facts and issues in this proceeding will take place within the same discovery and briefing limitations as applicable without BEIC's participation. Similarly, the parties' adjudicative rights will not be prejudiced by BEIC's limited participation as a party.

In 2012, the Commission amended its Rules of Practice and Procedure to update and clarify the rules and reduce the burden on parties to proceedings. Docket No. 11-05, *Rules of Practice and Procedure*, 77 Fed. Reg. 61519 (Oct. 10, 2012). The requirements for intervention were “modernized” and revised to afford BEIC and other government agencies a designated status for intervening in Commission proceeding with a specified standard for their intervention. *Id.*, 61522. Under the prior rule, the Commission tended to interpret intervention rules liberally. *Trans-Atlantic Agreement and Its Members – Independent Action*, 27 S.R.R. 16, 17 (ALJ 1995). BEIC submits that the 2012 amendments to Rule 68 reflect an intent to further liberalize the standard for BEIC's intervention. As noted in *Trans-Atlantic, supra*, the courts have urged administrative agencies to allow interventions liberally especially in cases that have widespread consequences. *Id.* If Complainant's allegations are successfully proven, this proceeding may have wide reaching consequences.

For the foregoing reasons, BEIC hereby requests leave to intervene as a limited party to this proceeding to participate in briefing as described in the preceding paragraphs.

Respectfully submitted,



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March 31, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of March, 2023, the foregoing BEIC Motion to Intervene has been served upon counsel for the Complainant, M.E. Dey by electronic mail to Brendan Collins at [bcollins@gkglaw.com](mailto:bcollins@gkglaw.com), and upon Hapag-Lloyd AG and Hapag-Lloyd (America) by electronic mail to Wayne Rohde and Rachel Schwartz at [wrohde@cozen.com](mailto:wrohde@cozen.com) and [rschwartz@cozen.com](mailto:rschwartz@cozen.com).

Signed in Washington D.C. March 31, 2023

  
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Jonathan Todd