

FEDERAL MARITIME COMMISSION

IN THE MATTER OF
INQUIRY
REGARDING
COMPLIANCE WITH
THE CEASE AND
DESIST ORDER IN
DOCKET NO. 20-14

Special Investigation No. 24-02

Served: June 18, 2024

BY THE COMMISSION: Daniel B. MAFFEI, *Chairman*;
Rebecca F. DYE, Louis E. SOLA, Carl W. BENTZEL,
Commissioners. Max M. VEKICH, *Commissioner*,
concurring.

Order Initiating a Non-Adjudicatory Investigation

The Federal Maritime Commission (Commission) investigates conduct that may violate the Shipping Act and the Commission's regulations. The Commission's Bureau of Enforcement, Investigations, and Compliance (BEIC) is charged with conducting investigations and recommending enforcement

actions. 46 C.F.R. § 501.3(f)(3)(ix).¹ After a review of evidence relevant to the inquiry or issue, BEIC may determine whether to recommend an enforcement action. Under its authority, the Commission may also determine that a formal investigation is necessary to properly exercise its regulatory duties and initiate a non-adjudicatory investigatory proceeding under Subpart R of the Commission's Rules of Practice and Procedure, 46 C.F.R. §§ 502.281-502.291. The Commission's designated representative may then issue orders or subpoenas compelling testimony or the production of documents relating to any matter under investigation. 46 C.F.R. § 502.286.

The Commission adjudicated certain claims alleged in a private party complaint in *Intermodal Motor Carriers Conference v. OCEMA*, FMC Docket No. 20-14. On February 13, 2024, the Commission found that the Respondents² in that action were engaged in restrictive practices that are unlawful under 46 U.S.C. § 41102(c) and issued an order directing Respondents to immediately cease and desist engaging in those practices. 2024 WL 641501 (FMC Feb. 13, 2024). The cease and desist order went into effect immediately upon issuance. There was no grace period, and to the extent that Respondents have not modified their conduct to conform to the order, they are in violation of the Shipping Act and the cease and desist order.

The Commission does not currently have reliable assurance that Respondents are complying with the cease and desist order, and is therefore exercising its authority to conduct a non-adjudicatory investigation and designates the Director of BEIC to conduct the investigation under the authority of 46 C.F.R. § 502.281. The BEIC Director may assign responsibility to other BEIC staff to assist in this non-adjudicatory investigation.

¹ 46 C.F.R. § 501.3(f)(3)(ix) references BEIC's precursor, the Bureau of Enforcement.

² Respondents refers to all the parties in FMC Docket No. 20-14 who are subject to the cease and desist order.

This investigation will examine whether Respondents have altered their rules and practices as required by the cease and desist order and will address the following subjects in particular and related lines of inquiry concerning Respondents' operations in the four regions covered by the cease and desist order, Chicago, Los Angeles/Long Beach, Memphis, and Savannah:

(1) Contracts, rules and practices that designate an exclusive chassis provider for merchant haulage, which may include inquiries about:

- (a) Changes to contracts, rules and practices made to comply with the cease and desist order;
- (b) Decisions not to change contracts, rules or practices to comply with the cease and desist order;
- (c) Communications with or notices sent to motor carriers, shippers or other interested or affected about changes made to conform to the cease and desist order;
- (d) And other subjects related to continuing arrangements that designate an exclusive chassis provider for merchant haulage.

(2) Continuing contractual relationships and practices through which Respondents can use merchant haulage volume to lower their carrier haulage rates when motor carriers have no choice of chassis providers, which may include inquiries about changes to those arrangements made to comply with the cease and desist order or decisions not to alter those arrangements.

(3) Exclusivity rules, restrictions, and practices currently applied to chassis supplied for merchant haulage at the Pool of Pools (POP) that services the Ports of Los Angeles and Long Beach which may include inquiries about:

- (a) Changes to those rules, restrictions, and practices made to comply with the cease and desist order or decisions not to make such changes;
- (b) Volume discounts based on both carrier and merchant haulage when motor carriers must use a designated chassis provider;
- (c) Respondents' practices in designating a particular chassis provider for merchant haulage moves; and
- (d) Respondents' rules or practices for allowing motor carriers or shippers to designate (select) the chassis provider used for merchant haulage moves.

Pursuant to 46 C.F.R. § 502.281, the Director of BEIC is specifically authorized to invoke or utilize any or all of the Commission's compulsory processes authorized by law including but not limited to the issuance of subpoenas and the taking of evidence under oath to accomplish this non-adjudicatory investigation.

Pursuant to 46 C.F.R. § 502.291, the Commission orders that this investigation be public.

By the Commission.

David Eng
Secretary

Commissioner VEKICH, concurring:

I concur with the Commission's decision to initiate a non-adjudicatory proceeding relating to the cease and desist order in Docket No. 20-14. Exclusive arrangements often stifle competitive markets and prevent them from functioning efficiently. It is the Commission's role to safeguard the ocean-borne transportation system, and we must ensure that regulated entities abide by orders of the Commission. For this reason alone, I support the initiation of the non-adjudicatory investigation.

However, exclusive arrangements may be justified by corresponding benefits which can offset the anticompetitive impacts. I believe review of exclusive chassis arrangements should include a careful analysis of the benefits to the industry. There are indications that exclusive chassis arrangements give rise to improved safety and roadability of chassis due to enhanced safety inspections and maintenance and repair programs.

Given that the maritime industry's efficient operation is one of the primary charges of this Commission, I believe we should fully consider enhanced safety and roadability considerations as a potential justification for exclusive chassis arrangements.