

ORIGINAL

**FEDERAL MARITIME COMMISSION**

EXCLUSIVE TUG FRANCHISES -  
MARINE TERMINAL OPERATORS  
**SERVING THE LOWER MISSISSIPPI**

Docket No. 01-06

Served: February 4, 2004

**ORDER DENYING PEAVEY COMPANY'S REQUEST**  
**THAT THE COMMISSION ISSUE SECTION 15**  
**ORDERS**

On June 11, 2001, the Commission issued an Order to Show Cause in this proceeding directing twelve marine terminal operators on the lower Mississippi River to show cause why they have not violated sections 10(d)(1) and 10(d)(4) of the Shipping Act of 1984 ("Shipping Act"), 46 U.S.C. app. §§ 1709(d)(1) and (d)(4). In October, 2001, the Commission referred the entire case to the Office of Administrative Law Judges to handle all aspects of the proceeding.

One of the respondents to this proceeding is Peavey Company, the operator of a grain elevator, St. Elmo Elevator, located in Paulina, Louisiana. Peavey filed a motion before Chief Administrative Law Judge Norman D. Kline ("ALJ") requesting that the Commission issue orders pursuant to section 15 of the Shipping Act, 46 U.S.C. app. § 1714. Section 15 provides, in pertinent part, that "[t]he Commission may require any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or

special report or any account, record, rate, or charge, or memorandum of any facts and transactions appertaining to the business of that common carrier.” Peavey seeks the issuance of five section 15 orders to overseas companies ordering that they furnish charter parties and “fixture documentation” with respect to four vessels named in the Commission’s June 11, 2001 Order to Show Cause.

Relying on Rule 73(a) of the Commission’s Rules of Practice and Procedure, 46 C.F.R. § 502.73(a), which requires that any motion that is beyond the authority of the presiding officer be referred to the Commission, the ALJ found that he could not make a determination of whether to issue section 15 orders as they may be issued only by the Commission. The ALJ thus certified the issue of Peavey’s request to the Commission for decision. We have decided that Peavey’s request shall be denied.

### POSITIONS OF THE PARTIES

#### A. Peavey’s motion

Peavey maintains that St. Elmo Elevator is a private export facility, not open to the general shipping public, through which grain and other perishable agricultural commodities pass. Peavey at 1. Peavey asserts that its operation of the elevator does not make it a marine terminal operator as defined by section 3(14) of the Shipping Act, 46 U.S.C. § 1702(14),<sup>1</sup> as

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‘That section states, in pertinent part, that:  
“marine terminal operator” means a person engaged in the United States in the business of famishing wharfage, dock,  
(continued...)

claimed in the Order to Show Cause, and that it has never been regulated by the Commission. Id. at 2-4. Moreover, Peavey contends that it does not have a published tariff and none of the cargo loaded at the elevator is subject to a tariff or service contract on file with the Commission; rather, the vessels served by the elevator are operated under private charter agreements. Id. at 2. Peavey thus disputes jurisdiction and is seeking the underlying charter parties or “fixture agreements” related to four vessels that the Commission’s Bureau of Enforcement (“BOE”) claims were being operated as common carriers when they were served at the elevator. Peavey maintains that the four vessels identified by BOE, M/Vs PACIFIC CHAMP, ATHINOULA, OTRADA, and INCE EXPRESS, are foreign flag bulk carriers owned, operated and/or chartered by principals located outside of the United States. Id.

Peavey argues that it has made significant efforts to locate and obtain the information from sources within the United States, has made requests to the foreign purchasers of the grain cargoes, and has issued eleven document subpoenas to third parties located within the United States, but has not received any documentation in response. Id. at 4-5. As a result, Peavey now requests that the Commission issue orders to Hyundai Merchant Marine Co., Ltd., China Ocean Shipping Company (“COSCO”), Mykonos Shipping Company, Ltd., Poseidon Schiffahrt GMBH, and Ahmet Bedri Ince Armatorluk Ve Nakliyat, pursuant to section 15 of the Shipping Act, to produce certain charter party and fixture documentation related

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(...continued)

warehouse, or other terminal facilities in connection with a common carrier.

to the alleged “common carrier” status of the carriers that load grain at Peavey’s export elevator. Id. at 1, 5. Peavey asserts that granting its request “will expedite resolution of this matter, will be cost efficient for all parties and the Commission, and will serve the interests of justice, judicial economy and due process.” Id. at 5. Moreover, Peavey contends that the information it seeks pertains to the business of the alleged “common carriers,” is not unduly burdensome, and can be redacted if it contains any commercially sensitive information. Id. at 5-6.

**B. BOE’s reply**

BOE argues that the Commission should deny Peavey’s request. BOE concedes that the Commission has occasionally used its section 15 authority as a means for parties to obtain information in formal proceedings. BOE Reply at 1 (citing Banfi Products Corn. - Possible Violations of Section 16. Initial Paragraph, of the Shipping Act. 1916 and Section 10(a)(1) of the Shinning Act of 1984, 26 S.R.R. 307 (1992); American Export Isbrandtsen Line - Rates on Military Cargo, 13 S.R.R. 753 (1973); Agreement No. 9827 Between United States Lines, Inc. and Sea-Land Service, Inc., 11 S.R.R. 426 (1970)). The issuance of section 15 orders on behalf of litigants has been infrequent, BOE contends, and should not be employed in the instant proceeding. BOE notes that Peavey requested subpoenas to seek the same information less than 45 days before the June 1, 2003 discovery deadline; four subpoenas were requested on April 17, two were requested on April 25, and five were requested on May 9, 2003. Id. at 2. BOE maintains that Peavey has known about the four vessels on which it seeks information for almost two years.

Assuming, arguendo, that the Commission grants Peavey's request, BOE argues that the section 15 orders that would be issued should ask for more information than Peavey is seeking. Id. at 2 & n.2 (citing Banfi, 26 S.R.R. 307). For instance, BOE would like to request documentation relating to all vessels owned, operated, managed and/or chartered that called in the U.S. over a significant period of time. BOE asserts that such information would "help better ascertain whether each such entity engaged in common carriage in the U.S. foreign commerce rather than placing reliance only upon the documents sought by Peavey relating to the four vessels." Id. at 3. The bills of lading of the four vessels, BOE contends, provide a sufficient basis upon which to justify a broader inquiry into the activities of the entities identified by Peavey. BOE avers that two or more shippers were issued bills of lading on each of the four vessels and, as there is a presumption of common carriage if there are two or more shippers per voyage, Activities. Tariff Filing Practices and Carrier Status of Containershins. Inc., 9 F.M.C. 56 (1965), such information would be relevant to determining whether the entities are common carriers. Id. at 3-4; BOE Opposition at 3 n.3.

Therefore, BOE asserts that Peavey's request to issue orders pursuant to section 15 should be denied, or, if granted, modified as suggested.

C. Peavey's motion to file a reply to a reply

Peavey submitted a Motion for Leave to File Supplemental Memorandum Regarding Request Pursuant to Section 15 of the Shipping Act and a separate supplemental memorandum. In its motion, Peavey requests that the Commission allow it to file a reply to BOE's "unexpected

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opposition” to its motion requesting the issuance of section 15 orders. Peavey argues that its reply “may be of assistance” to the Commission in its consideration of Peavey’s original motion and it responds to certain issues raised by BOE, including BOE’s request to expand the scope of any section 15 order issued. Peavey Reply at 1. Peavey concedes that Rule 74 of the Commission’s Rules of Practice and Procedure, 46 C.F.R. § 502.74, does not permit a reply to a reply, but argues that “in these unique circumstances” granting the request will serve the interests of justice. Id. at 2.

D. BOE’s opposition to Peavey’s motion to file a reply to a reply

BOE opposes Peavey’s request to file a reply to a reply. BOE challenges Peavey’s claim that BOE’s opposition to its request for section 15 orders was unexpected and asserts that, regardless, such surprise does not warrant granting its motion. BOE Opposition at 1-2. Moreover, BOE contends that Peavey incorrectly argues in its reply that BOE cannot request expansion of any section 15 order that might be issued. BOE asserts that in Banfi, 26 S.R.R. at 308, the Commission specifically asked other parties that did not request the section 15 order to submit any additional questions they wished to include in the section 15 order to be issued, such that BOE’s request is proper here. Id. at 2.

E. ALJ’s Order to answer questions before referral to Commission

Upon receipt of Peavey’s request for the Commission to issue section 15 orders, the ALJ issued an Order to Answer Certain Questions Before Referral of Request for Section 15

Orders. The ALJ maintains that when a request is made for the Commission to issue section 15 orders, the presiding judge must do more than simply pass along that request to the Commission. The ALJ states that in Agreement No. 9827, 11 S.R.R. 426, the Commission ruled that when such a request is made, the presiding officer shall make findings on relevancy and on whether the requested information is available from other sources. Order at 5-6. Therefore, the ALJ requested information on three matters. The questions were posed as follows:

1. Since Peavey has been engaging in discovery for some time and has specifically directed some of its discovery to the four vessels involved in question and has even obtained documents and an affidavit from a vessel agent (Mr. Costas Sklepas), swearing that the four ships carried cargoes under charter and private contractual arrangements, is not the record sufficient as to these four vessels? (footnote omitted). Bear in mind that the criteria for determining common-carrier status are several and that BOE has the burden of proving that Peavey served ships in common carriage. In other words, is a section 15 order really necessary for Peavey to rebut BOE's allegations as to the status of the four ships because normal discovery is inadequate? Also, will the issuance of a section 15 order unduly delay progress in the case?

2. It is not clear as to who are the parties to be served with a section 15 order. It appears that there are five companies that Peavey wishes to

have served, namely Hyundai Merchant Marine Co. Ltd. in South Korea; China Ocean Shipping Co. (COSCO) to be served through its agent in Louisiana, COSCO North America, Inc.; Mykonas Shipping Company, Ltd., located in Greece; Poseidon Schiffahrt GMBH, located in Germany; and Ahmet Bedri Ince Armatorluk Ve Nakliyat, located in Turkey. Do all these companies fall into the category of “any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof,” as required by section 15?

3. Peavey refers to only four vessels. However, it appears that there are seven vessels involved that BOE has identified. For example, Attachment C of the Commission’s Order to Show Cause lists a ship named “Sofia” in addition to the four in question that called at Peavey’s terminal. Also there is a ship called “Silverfjord” listed in Attachment B to the Commission’s Order to Show Case. Is Peavey not contesting any claim that these other three ships operated as common carriers?

Id. at 6-7. The **ALJ** sought a response from both Peavey and BOE.

1. Peavey’s response

In response to question number one, Peavey contends that BOE does not have the charter parties or the fixture information for the vessels to prove that they were operating as

common carriers. Peavey Response at 1. Peavey then argues that the information it seeks goes to the issue of jurisdiction and the Commission has indicated in previous case law that jurisdiction should be determined before addressing the merits. Id. (citing Rose Int'l, Inc. v. Overseas Moving Network Int'l, Ltd., 29 S.R.R. 252, 265 (2001); River Parishes Co., Inc. v. Ormet Primary Aluminum Corp., 28 S.R.R. 75 1, 762 (1999); Government of the Territory of Guam v. Sea-Land Service, Inc., 28 S.R.R. 119,159 (1998)). Moreover, Peavey avers, granting the section 15 orders would not delay the proceeding, as BOE has yet to conclude depositions. Id. at 1-2.

In response to question two, Peavey asserts that the parties to be served as listed in the ALJ's Order are correct. However, Hyundai Merchant Marine Co. Ltd. and COSCO may now be eliminated as Peavey has received the fixture and time charter documents with respect to the MN PACIFIC CHAMP. Id. at 2-3. In addition, Peavey states that Changbai Shipping Co., Ltd., the charterer of the MN ATHINOULA, may also be eliminated because Changbai is no longer in possession of the voyage file.<sup>2</sup> Id. Based on other information, Peavey maintains its request for the issuance of a section 15 order to the owner of the M/V ATHINOULA, Athinoula Maritime Ltd. Id. As to whether the companies Peavey seeks to serve with section 15 orders are common carriers, Peavey contends that BOE failed to provide the names, employers, titles and addresses of the parties BOE claimed were the common carriers, thus the vessel/ownership information provided by Peavey "is from the

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<sup>2</sup>Peavey actually subpoenaed Changbai Shipping for this information during discovery. Peavey at 8.

Lloyd's Registry/Fairplay and provides ownership/management information." Id. at 2.

In response to question three, Peavey maintains that it is seeking information only as to four vessels cited by BOE, because it believes that BOE does not have sufficient evidence to prove that the other three vessels were engaged in common carriage. Evidence regarding these vessels' lack of common carriage status, Peavey avers, will be submitted at the appropriate time. Id.

## 2. BOE's response

In response to question one, BOE argues that Peavey's request for section 15 orders will cause unnecessary delay because the Commission must consider the request after referral by the ALJ and then arrange the issuance of the orders and allow adequate time for response. BOE Response at 1. Moreover, BOE asserts that the recipients of the orders may file motions or other pleadings opposing them in full, in part or seeking a modification, to which replies may also be filed by Peavey or BOE. As a result the Commission would have to issue an additional decision, thus elongating the process. Id.

In response to question two, BOE suggests that even though Peavey indicates that the MN PACIFIC CHAMP and MN ATHINOULA (in part) may be removed from the request, the entities for these individuals should still be served. Id. at 1-2. Further, BOE asserts that it appears that one or more of the entities identified may have acted as common carriers, having issued bills of lading to multiple shippers, and thus the Commission has a sufficient basis upon which to issue section 15 orders. Id.

In response to question three, BOE merely counters Peavey's claim that BOE does not have sufficient evidence to prove that the unnamed vessels are common carriers. Id. at 2-3.

### DISCUSSION

The issue before the Commission is whether to grant Peavey's request to issue section 15 orders to several overseas companies, ordering that they furnish charter parties and "fixture documentation" with respect to certain vessels named in the Commission's June 11, 2001 Order to Show Cause. However, before addressing the merits of that claim, it must first be determined whether Peavey's motion to file a reply to a reply should be granted.

#### A. Procedural claim

Rule 74(a)(1) of the Commission's Rules of Practice and Procedure provides that with regard to replies to motions, "a reply to a reply is not permitted." 46 C.F.R. § 502.74(a)(1). Peavey's argument for allowing it in this case is that BOE's opposition to its original motion requesting the issuance of section 15 orders was unexpected, its reply maybe of assistance to the Commission as a supplement to its original motion and as a response to issues raised by BOE; and it would serve the interests of justice. BOE opposes Peavey's request, asserting that BOE's supposedly unexpected opposition to Peavey's original motion does not warrant allowing a reply to a reply.

Rule 74(a)(1) unequivocally prohibits replies to replies, and Peavey's arguments for allowing such a filing are unpersuasive. Opposition from BOE should not have been entirely unexpected, and Peavey has not shown that a lack of

expectation is a valid basis on which to depart from procedural requirements. Moreover, there is no indication that Peavey's original argument would have differed in any drastic manner such that its position would be prejudiced. Peavey's contention that the reply would be of assistance in considering its original motion and would allow Peavey to respond to BOE's arguments is exactly the type of filing the rule seeks to avoid. 46 C.F.R. § 502.74(a)(1). Peavey also fails to explain why these circumstances are unique such that permitting the reply would serve the interests of justice. Therefore, Peavey's motion to file a reply to a reply is denied.

#### B. Merits

Section 15 of the Shipping Act provides, *inter alia*, that “[t]he Commission may require any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report or any account, record, rate, or charge, or memorandum of any facts and transactions appertaining to the business of that common carrier.” 46 U.S.C. app. § 1714. The Commission's decision to issue a section 15 order is a matter of discretion.

##### 1. Background of section 15

The Commission's authority to request information was first provided by section 21 of the Shipping Act, 1916, which was then carried over, as amended, to the 1984 Act as section 15. The legislative history of the 1916 Act explains that this section empowered the Commission “to prescribe a uniform system of accounts as well as the form of all accounts, records, and memoranda to be kept by carriers subject to the act, and its examiners given access to such accounts for the purpose of

inspection and examination.” H.R. Rep. No. 659, 64<sup>th</sup> Cong., 1st Sess. at 32 (1916).

Several appellate opinions have interpreted the scope of former section 21. These cases are applicable to current section 15 of the Act, because “prior interpretations of [] the 1916 Act’s provisions have continuing precedential force” under the Shipping Act of 1984. Plaquemines Port, Harbor and Terminal Dist. v. Federal Maritime Comm’n, 838 F. 2d 536, 542 (DC. Cir. 1988). The cases clarify that the Commission may issue orders on its own behalf pursuant to section 15 in order to collect information necessary to the administration of the Shipping Act. See Isbrandtsen-Moller Co. v. United States, 300 U.S. 139, 144 (1936) (Shipping Board<sup>3</sup> may use section 21 to gather information in furtherance of regulatory functions). The Commission may employ this authority in the preliminary investigation of a matter, or during the course of an investigatory proceeding. See Pacific Coast European Conf. v. Federal Maritime Comm’n, 359 F.2d 416,418 (9th Cir. 1966) (Commission may rely on both its subpoena power and its authority under section 21 to investigate an agreement). The only limitations on the use of section 15 orders are that they be within the scope of the Commission’s authority, that the purpose of the request be made clear, and that the information sought be reasonably relevant. See Montshin Lines v. Federal Maritime Bd., 295 F.2d 147, 153-54 (DC. Cir. 1961) (order issued pursuant to section 21 is adequate “if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant”) (quoting United

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<sup>3</sup>At the time the United States Shipping Board was charged with administering the 1916 Act.

States v. Morton Salt Co., 338 U.S. 632, 652-53 (1950)); Hellenic Lines Ltd. v. Federal Maritime Bd., 295 F.2d 138,140 (D.C. Cir. 1961) (order issued pursuant to section 21 must state the purpose for seeking the information such that the relevance of the information sought can be assessed); Far East Conf. v. Federal Maritime Comm'n, 337 F.2d 146, 150 (D.C. Cir.) (orders issued pursuant to section 21 may be issued even without evidence of a violation of the Shipping Act), cert. denied, 379 US. 991 (1964).

## 2. Commission cases

Whether the Commission can issue section 15 orders on behalf of non-Commission entities in the course of an adjudicatory proceeding, however, has been addressed only in a handful of Commission decisions. BOE cites Agreement No. 9827 Between United States Lines. Inc. and Sea-Land Serv. Inc., 11 S.R.R. 426,427 (1970), where the Commission found that the U.S. Department of Justice could petition the Commission to issue an order under former section 21, reasoning that it is irrelevant that the party making the request is a litigant in a proceeding rather than the Commission issuing a section 21 order on its own behalf!

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<sup>4</sup>BOE also cites Banfi Products Corp. - Possible Violations of Section 16. Initial Paragraph, of the Shipping Act. 1916 and Section 10(a)(1) of the Shipping Act of 1984, 26 S.R.R. 307 (1992), where the Commission granted a request by BOE to issue a section 15 order during the course of an adjudication to be served on a foreign non-party in order to authenticate certain documents and obtain further information. Id. The Commission found that it could require a report from a conference, that orders of this type are allowed in both  
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However, the Commission addressed this issue more recently, and in the context of non-Commission, non-governmental entities, in Petition of Coalition for Fair Play in Ocean Shipping for Section 15 Order in Transpacific Inbound Trade Lanes, 28 S.R.R. 1061 (1999). In that case, petitioner requested that the Commission issue a section 15 order to the Transpacific Stabilization Agreement and its members to collect information regarding service contracts during the period from July through November, 1999. 28 S.R.R. 1061-62. In denying the request, the Commission noted, inter alia, that

Section 15 is solely an information gathering authority: it allows the Commission to obtain information in aid of its responsibilities to administer and enforce the Shipping Act. It does not provide a private right of relief to parties injured by violations of the Act, which is provided in section 11 [Complaints, Investigations, Reports, and Reparations], or procedural rights to obtain information from

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investigatory proceedings and as a general means of gathering information, and that the Commission need not charge a violation of law or believe a violation is probable. Banfi, 26 S.R.R. at 308. The Commission focused on the fact that BOE was seeking information in the course of its investigation and that it was irrelevant that this occurred in the course of an adjudicatory proceeding. The Commission did not rely on the notion that any party to a proceeding should be allowed to seek the issuance of section 15 orders. Therefore, Banfi cannot be properly relied on as precedent to grant requests to issue section 15 orders on behalf of non-Commission parties; and it is not relevant to the instant case.

respondents, which is provided to complaining parties in section 12 [Subpenas and Discovery].

Id. at 1062-63 .<sup>5</sup>

### 3. Peavey's argument

Peavey does not cite any cases to support its claim that its request for section 15 orders should be granted. Peavey disputes the claim of jurisdiction over its terminal, arguing that it does not serve common carriers and thus is not a marine terminal operator subject to the Shipping Act.<sup>6</sup> Peavey avers that it needs the underlying documentation of the four vessels that BOE claims were being operated as common carriers and called at its terminal to support its argument. Peavey further contends that it made significant efforts to obtain the information from other sources, but has not received any documentation in response. However, it should be noted that in Peavey's response to the ALJ's additional questions, Peavey explained that it did eventually receive the documents it was seeking regarding one vessel, the M/V PACIFIC CHAMP, in response to one of its subpenas.

While conceding that the Commission has previously used its section 15 authority to allow parties to obtain information in formal proceedings, BOE argues that Peavey's

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<sup>5</sup>It should be noted that the Commission did not discuss its earlier decision in Agreement No. 9827.

<sup>6</sup>An entity must serve common carriers to be considered a marine terminal operator under the Shipping Act. 46 U.S.C. app. § 1702(14).

request should be denied. BOE asserts that Peavey has known of the vessels about which it seeks information for almost two years and did not seek to obtain the information via subpoena until less than 45 days, before the discovery deadline.

In response to the ALJ's additional questions, Peavey generally states that the Commission must determine jurisdiction before addressing the merits of the case against Peavey, and that granting its motion would not unduly delay the proceeding. Peavey contends that BOE does not have the information for the vessels necessary to prove that they were operating as common carriers.<sup>7</sup> BOE argues to the contrary that granting the orders would cause unnecessary delay due to the number of possible filings that could be submitted as a result of issuing the orders, and that BOE indeed has sufficient evidence to prove common carriage.

We find no basis for granting Peavey's request. Although the Commission asserted, in dicta, that it could grant section 15 orders on behalf of non-governmental parties in Agreement No. 9827, it provided no analytical basis for that decision. As noted, supra, the Commission merely stated that it is irrelevant that the entity making the request for such an order is not Commission staff, but rather a litigant in a proceeding before the Commission, as long as it is shown that the information sought is relevant and not otherwise available. 11 S.R.R. at 427.

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<sup>7</sup>It is worth noting that section 15 orders can only be issued to common carriers, and Peavey fails to explain why it believes section 15 orders would be appropriately served on entities it claims are not common carriers.

Moreover, the test for issuing section 15 orders as developed in Agreement No. 9827 has been overruled by Petition of Coalition for Fair Play. By explaining that section 15 does not confer on outside parties procedural rights to obtain information and denying such a request in Petition of Coalition for Fair Play, the Commission rejected the approach in Agreement No. 9827. Hence, there is no right created by Commission case law for non-Commission private parties to obtain the issuance of section 15 orders to gather information in an adjudicatory proceeding.

The Commission finds that private parties are not entitled to gather information by the issuance of section 15 orders by the Commission. Therefore, Peavey's request is denied.'

#### 4. Section 15 authority vs. subpoena authority

Peavey contends that it has attempted to obtain the information it is seeking through discovery from other entities to no avail (except for the information regarding one vessel which it received after it filed its original motion). Peavey now requests the issuance of section 15 orders seeking the same information to be issued to different, additional entities it failed to subpoena during discovery. Peavey has not presented the Commission with any argument as to why it should issue section 15 orders in lieu of issuing subpoenas, and we decline to do so.

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<sup>8</sup>We note that this finding does not impose any additional restrictions on the Commission's section 15 authority. As interpreted by the Supreme Court and the D.C. and 9th Circuits, discussed supra, the Commission is entitled to issue section 15 orders on its own behalf during the course of adjudications and investigations.

Section 15 orders are an inadequate substitute for the discovery procedures Congress has established in the Shipping Act. The Shipping Act and the Commission's regulations provide parties in adjudicatory proceedings the ability to obtain relevant information through discovery. Section 12 of the Act, 46 U.S.C. app. § 1711, provides that in investigations and adjudicatory proceedings, "depositions, written interrogatories, and discovery procedures may be utilized by any party under rules and regulations issued by the Commission," and "the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence." Rule 131 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.13 1, provides that "[s]ubpenas for the attendance of witnesses or the production of evidence shall be issued upon request of any party."

It is an inappropriate use of section 15 to allow private parties to maneuver around the Commission's procedural rules to obtain discovery that they otherwise failed to seek in a timely manner.

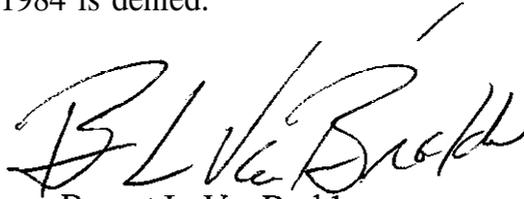
### CONCLUSION

There is no basis upon which the Commission may grant requests of non-Commission private parties to issue section 15 orders in Commission proceedings. The Shipping Act provides an alternate means of obtaining the information by subpoena. Peavey failed to use the subpoena power to obtain the documentation from the appropriate entities, and there is no basis for granting its request to circumvent the time limits on discovery through the use of section 15 orders. Peavey's request is therefore denied.

THEREFORE, IT IS ORDERED That Peavey Company's request to file a reply to a reply is denied; and

IT IS FURTHER ORDERED, That Peavey Company's request that the Commission issue orders pursuant to section 15 of the Shipping Act of 1984 is denied.

By the Commission.

  
Bryant L. VanBrakle  
Secretary