

**BEFORE THE  
FEDERAL MARITIME COMMISSION  
WASHINGTON, D.C.**

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**DOCKET NO. 08-03**

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**MAHER TERMINALS, LLC  
COMPLAINANT,**

**v.**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY  
RESPONDENT.**

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**CONSENT MOTION OF  
AMERICAN ASSOCIATION OF PORT AUTHORITIES  
TO PARTICIPATE AS *AMICUS CURIAE***

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Pursuant to Rule 78 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.78, the American Association of Port Authorities (AAPA), which represents virtually all of the nation's public port authorities, moves with the consent of the parties for leave to file an *amicus* brief in this proceeding. The brief is filed conditionally herewith within seven days of the filing of the Port Authority's brief, as required by Rule 78(c). Counsel for the AAPA received consent to the motion and filing of the brief verbally from counsel for Maher Terminals, LLC ("Maher") and counsel for the Port Authority of New York and New Jersey ("Port Authority") on July 13, 2016.

The AAPA brief addresses two issues identified by the Commission in its Order of June 21, 2016: "the extent to which a reasonable preference or prejudice must be based on 'transportation factors'" (issue 3) and "what factors, transportation-related or otherwise, bear on whether a preference or prejudice is reasonable in the context of port authority leasing

decisions.” (issue 4). These are questions of law or policy that have the potential to significantly affect all public port authorities as they engage in terminal leasing and operating activities.

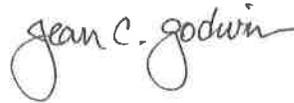
The AAPA has a strong interest in the Commission’s confirmation and reaffirmation of a standard that defers to a port’s reasonable business judgments, and that allows for consideration of all factors relevant to the dynamic transportation environment in which modern ports must operate. AAPA member ports have been involved virtually all of the Shipping Act litigation at the Commission over the past several decades, and AAPA respectfully submits that this experience provides a perspective that will be of assistance in resolving the remand from the court of appeals. The AAPA has been assisted on the brief by counsel who were collectively likewise involved in almost all of that litigation, including a former General Counsel of the Commission. The Commission has generally resolved these cases with the recognition that ports are required to have significant business discretion, within the confines of the Act, to undertake their mission.

In *Sea-Land Service, Inc. -- Possible Violations of the Shipping Act*, 29 S.R.R. 1326, 1329 (2003), the Commission rejected prior more restrictive practices and simply required *amicus* movants, at any stage of a proceeding, to state their interests in the proceeding and explain why their participation as an *amicus curiae* would be desirable. The AAPA has done so by explaining that its members have been the subject of discrimination and other Shipping Act claims related to their leasing activities, and have a direct interest in the Commission affirming its prior recognition of a broad standard of deference to a port’s reasonable business judgments, allowing the consideration of the full range of factors relevant to the operation of port resources in the public interest. The AAPA has also set out why given this experience and that of its advising counsel on these issues its participation could be useful to the Commission.

The AAPA's motion has been timely filed with the consent of the parties. Because AAPA has shown a reasonable interest in the proceeding, and that its participation would be desirable, it meets the Commission's standards and should be permitted to participate as *amicus curiae*. See *Sea-Land*, 29 S.R.R. at 1330 (allowing four separate industry associations to file as *amici* in the penalty phase of an enforcement proceeding to address the policy implications of the fine proposed in the particular case).

WHEREFORE, AAPA respectfully requests that its motion for leave to file an *amicus* brief in this proceeding be granted and that the *amicus* brief filed conditionally with this motion be accepted.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jean C. Godwin". The signature is written in black ink and is positioned above the typed name and title.

Jean C. Godwin  
Executive Vice President and General Counsel  
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July 22, 2016

## Certificate of Service

I hereby certify that I have this 22nd day of July, 2016, served a true and correct copy of the foregoing consent motion for leave to file an *amicus* brief, along with a copy of the brief filed conditionally therewith, upon all parties of record in this proceeding via electronic mail and first class mail addressed as follows:

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John Longstreth