

**ORAL TESTIMONY OF
MATTHEW LEECH
PRESIDENT & CHIEF EXECUTIVE OFFICER
PORTS AMERICA**

**BEFORE THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
U.S. HOUSE OF REPRESENTATIVES**

**HEARING ON
“Maritime Transportation Supply Chain Issues”**

MARCH 28, 2023

Chairman Webster, Ranking Member Carbajal, and members of the Subcommittee, my name is Matt Leech, and I serve as President and CEO of Ports America. I appreciate the opportunity to appear before you this afternoon.

Ports America is the largest marine terminal operator or commonly known as MTO and stevedore in the United States. As an America company, we have been operating for over 100 years, and we are one of the largest U.S. maritime employers. Currently, Ports America manages operations in thirty-three ports and seventy locations throughout the country. The highest priority in our operations is the health and safety of our indispensable workforce.

I am also here today on behalf of the National Association of Waterfront Employers (“NAWE”), of which Ports America is a proud member.

NAWE is a non-profit trade association who ensures that there are open lines of communication between Congress, regulatory agencies, and the gateways to our Nation’s international commerce through proactive advocacy.

MTOs are the lynchpin of our maritime transportation industry, employing thousands of American waterfront workers, investing in U.S. port infrastructure, and serving as the critical link moving cargo between the sea and land.

We all understand and witnessed the significant supply chain disruptions experienced during the COVID-19 pandemic. However, the current maritime supply chain is vastly different. Maritime cargo volumes and freight rates have normalized to pre-COVID 19 levels and in many cases they are lower.

In 2022, Congress responded to this crisis, including leaders within this Subcommittee and enacted the Ocean Shipping Reform Act or commonly referred to as OSRA. OSRA directed the Federal Maritime Commission to undertake several administrative and regulatory actions to implement the Commission's new authorities. I applaud the efforts of the Commissioners and their staff in taking rapid action through repeated public engagement.

In some cases, the Commission has gotten it right, such as increasing investigation of improper charges and practices, and diligently implementing the new charge complaint process.

In other cases, however, the commission doesn't appear to be getting it right. Notably in the issuance of its October 2022 Notice of Proposed Rulemaking regarding demurrage and detention billing requirements. I offer two specific examples.

First, the proposed rule as drafted would penalize MTOs, threaten an MTOs ability to charge Terminal Demurrage, which we consider a Storage Fee.

Second, in a recent informal adjudication decision taken up by the FMC, a majority of the Commissioners determined that the imposition of equipment detention, essentially a fee charged by ocean carriers for the use of their equipment beyond “free time,” on a holiday weekend when the equipment return location was normally closed, was at odds with the “incentive principle” and therefore unreasonable under the Shipping Act.

The application of the interpretation of this recent decision falls short of the Commission’s own Incentive Principle as noted in Commissioner Bentzel’s sole dissenting opinion.

Mr. Chairman, I ask unanimous consent to submit for the hearing record, Commissioner Bentzel’s dissenting order... TCW, Inc. v. Evergreen Shipping Agency (America) Corp. & Evergreen Line.

Despite this clear notice and the fact that the shipper's agent had every opportunity to return the equipment before the holiday weekend, the Commission deemed the detention charges unreasonable. Some in the industry believe that this logic could be extended to terminal demurrage or storage, even though terminal demurrage storage is qualitatively different from equipment detention.

The analysis under the Incentive Rule should consider both the actual differences in the charges as well as the costs associated for the services the fees are compensating.

In this industry, fees for storage of goods are and always have been a **time-based service** irrespective of the day of the week.

In the interest of time, my written testimony includes relevant information regarding investments MTO's have made on operations and cargo handling equipment. Our industry appreciates Congressional support to modernize port infrastructure and achieve decarbonization of the entire maritime sector including our local communities.

In closing, I want to thank you all for inviting me to share updates and concerns on these critical issues which impact our industry. I am truly grateful for your support of America's MTOs. Again, NAWE's members top priority is the safe working environment for America's waterfront employees.

I am happy to answer any questions related to my testimony.