

Issued: October 31, 2019

FEDERAL MARITIME COMMISSION

POSSIBLE REVOCATION OF PASSENGER VESSEL OPERATOR
PERFORMANCE CERTIFICATE NO. P1397 GREAT NORTHERN
& SOUTHERN NAVIGATION Co., LLC DBA FRENCH
AMERICA LINE

DOCKET NO. 19-08

ORDER GRANTING HEARING AND DIRECTING GREAT NORTHERN & SOUTHERN NAVIGATION Co. LLC DBA FRENCH AMERICA LINE TO SHOW CAUSE

Pursuant to 46 C.F.R. § 540.8(c) the Federal Maritime Commission grants a hearing and directs respondent Great Northern & Southern Navigation Co., LLC DBA French America Line, a certified passenger vessel operator, to show cause why its Performance Certificate should not be revoked for cause.

Based on information provided to it, the Commission's Bureau of Enforcement makes the following allegations:

STATEMENT OF FACTS CONSTITUTING BASIS FOR COMMISSION ACTION

1. Great Northern & Southern Navigation Co., LLC dba French America Line (French America Line or FAL) is a Louisiana Limited Liability Company.
2. According to records submitted to the Commission's Bureau of Certification and Licensing (BCL), French America Line is said to maintain its principal offices at 700 Churchill Parkway, Avondale, LA 70094.
3. BCL records identify the principal of French America Line as Christopher Kyte, Chairman,

and Manager Duane Kendall Grigsby (Ken Grigsby) as Chief Operating Officer.

4. Christopher Kyte has provided BCL with his address as 883 Island Drive, Suite 214, Alameda, CA 94502.
5. BCL records identify David Christopher Tidmore as Registered Agent for service of process for FAL.
6. Louisiana Secretary of State records also identify David Christopher Tidmore as Registered Agent for service of process for FAL, located at 3104 Roberta St. Metairie, LA 70003.
7. On October 4, 2016, FAL entered into an Escrow Agreement with KeyBank, N.A. for the purposes of providing proof of Financial Responsibility for Indemnification of Passengers in the Event of Nonperformance.
8. Upon receipt of the escrow agreement, BCL issued Performance Certificate No. P-1397 effective October 5, 2016.
9. French America Line is a Certificant operating as a passenger vessel operator (PVO) pursuant to Certificate (Performance) No. P-1397 since October 2016.
10. On October 26, 2016, FAL's sole vessel, the LOUISIANE, suffered a sanitary system failure, requiring FAL to cancel multiple sailings.
11. The escrow agreement requires FAL to submit weekly recomputations of unearned passenger revenue and refunds, and are used to adjust the amount in the escrow account accordingly.
12. The escrow agreement requires FAL submit audit reports that attest to the veracity of unearned passenger revenue recomputations on a quarterly basis.
13. The 2016 4th Quarter Independent Audit for October, November, and December was not received on or before the due date of February 14, 2017.
14. The 2017 1st, 2nd, and 3rd Quarter Independent Audits were not received on or before the

due dates of May 15, 2017, August 14, 2017, and November 14, 2017, respectively.

15. The Louisiana Secretary of State webpage indicates that, on September 21, 2017, FAL changed its name to “Great Northern & Southern Navigation Co LLC French America Line” from “Great Northern & Southern Navigation Co., LLC”. FAL failed to notify the Commission of this change.
16. By email correspondence dated December 22, 2017 to Tajuanda Singletary, Ken Grigsby requested information about the audit process and what FAL needed to provide.
17. Tajuanda Singletary responded to Ken Grigsby by email January 3, 2018 with paragraph 8 of the escrow agreement which detailed the requirements for the independent audit.
18. By correspondence emailed January 25, 2018 to FAL, BCL sent a notification letter to FAL of the Commission’s intent to conduct a review of Unearned Passenger Revenue pursuant to 46 C.F.R. Part 540.
19. In the January 25, 2018 letter to FAL, BCL requested various financial documents to be submitted by February 1, 2018.
20. By correspondence emailed January 29, 2018 to BCL, Christopher Kyte requested a two-week extension to provide the documents. BCL granted extension to February 9, 2018.
21. The documents requested in the notice of review letter were not received by February 9, 2018. On February 12, 2018 BCL emailed Christopher Kyte, again requesting the documents.
22. The 2017 4th Quarter Independent Audit for October, November, and December was not received on or before the due date of February 14, 2018.
23. By correspondence emailed February 21, 2018 to FAL, BCL again requested the documentation named in the January 25, 2018 notice of review letter that was not submitted

by the February 9, 2018 extended deadline.

24. The 2018 1st Quarter Independent Audit for January, February, and March was not received on or before the due date of May 15, 2018.
25. By correspondence emailed May 18, 2018 to FAL, BCL notified FAL that it was not in compliance with the escrow agreement and gave a deadline of June 1, 2018 to come into compliance with the escrow agreement and provide BCL with the required reports, weekly recomputation certificates, statement of good standing with the state of Louisiana, and provide the current operating address of FAL.
26. By correspondence emailed May 31, 2018 to BCL, FAL responded to the May 18, 2018 notification stating that FAL remained at the same operating address of 700 Churchill Parkway, Avondale, LA 70094. FAL also requested an extension to submit the requested documents.
27. On June 6, 2018, BCL granted FAL's request for a deadline extension until June 30, 2018.
28. BCL did not receive the required recomputation certificates, requested documents, or independent reports by June 30, 2018.
29. On July 12, 2018, a conference call was held between BCL and FAL during which FAL agreed it would report to the FMC the progress of its independent auditor no later than the morning of Wednesday, July 18, 2018. The parties agreed that a final audit report would be made available to the FMC no later than Friday, July 27, 2018. BCL sent a follow-up email to FAL memorializing the conference call.
30. On July 16, 2018, Area Representative Eric Mintz visited the principal address of FAL at 700 Churchill Parkway, Avondale, LA 70094. FAL was not located at that address.
31. By correspondence emailed July 17, 2018, Mr. Scott Rojas, Director of Facilities and IT at

the building located at 700 Churchill Parkway, Avondale, LA 70094 confirmed French America Line/Great Northern & Southern Navigation Co., LLC vacated that location the week of November 27, 2017.

32. BCL did not receive a final audit report on July 27, 2018 as agreed during the July 12, 2018 call.
33. The 2018 2nd Quarter Independent Audit for April, May, and June was not received on or before the due date of August 14, 2018.
34. By correspondence emailed August 27, 2018 to FAL, BCL informed FAL that it was still not in compliance with the escrow agreement and that the outstanding reports continued to be past due.
35. The 2018 3rd Quarter Independent Audit for July, August, and September was not received on or before the due date of November 14, 2018.
36. By correspondence mailed and emailed February 6, 2019 to FAL, BCL informed FAL it was not in compliance with the escrow agreement and requested FAL provide the necessary documentation to comply with the agreement, the FMC's regulations, and the requirements of the Louisiana Accountancy Act no later than April 9, 2019.
37. The 2018 4th Quarter Independent Audit for October, November, and December was not received on or before the due date of February 14, 2019.
38. BCL did not receive the correct requested documents due April 9, 2019 per BCL's letter dated February 6, 2019.
39. By correspondence mailed and emailed April 10, 2019 to FAL, BCL provided notice to FAL of BCL's intent to revoke FAL's Performance Certificate.
40. The 2019 1st Quarter Independent Audit for January, February, and March was not received

on or before the due date of May 15, 2019.

41. As of October 9, 2019, FAL was not in good standing with the Louisiana Secretary of State.

THE COMMISSION'S JURISDICTION AND REQUIREMENTS OF LAW

42. Under 46 U.S.C. § 41302(a), the Commission is empowered to investigate any conduct that the Commission believes to be in violation of Part A of Subtitle IV of Title 46 U.S. Code, 46 U.S.C. §§ 40101-44101.

43. Through 46 U.S.C. § 44106, 46 U.S.C. § 41302(a) also applies to proceedings conducted by the Commission under Part C, 46 U.S.C. §§ 44101-44106.

44. 46 U.S.C. § 44102 provides:

(a) Filing requirement. A person in the United States may not arrange, offer, advertise, or provide transportation on a vessel to which this chapter applies unless the person has filed with the Federal Maritime Commission evidence of financial responsibility to indemnify passengers for nonperformance of the transportation.

(b) Satisfactory evidence. To satisfy subsection (a), a person must file—
(1) Information the Commission considers necessary; or
(2) A copy of the bond or other security, in such form as the Commission by regulation may require.

45. The Commission's regulations at 46 C.F.R. § 540.8 provide:

(c) If the applicant, within 20 days after notice of the proposed denial, revocation, suspension, or modification under paragraph (b) of this section, requests a hearing to show that such denial, revocation, suspension, or modification should not take place, such hearing shall be granted by the Commission.

46. The Commission's implementing regulations at 46 C.F.R. §540.3 provide:

No person in the United States may arrange, offer, advertise, or provide passage on a vessel unless a Certificate (Performance) has been issued to or covers such person.

47. The Commission's regulations at 46 C.F.R. §540.8(b) provide that a Certificate (Performance) be denied, revoked, suspended, or modified for any of the following reasons:

- (1) Making any willfully false statement to the Commission in connection with an application for a Certificate (Performance);
- (2) Circumstances whereby the party does not qualify as financially responsible in accordance with the requirements of the Commission;
- (3) Failure to comply with or respond to lawful inquiries, requests for information, rules, regulations, or orders of the Commission pursuant to the rules of this subpart.

**BASIS FOR REVOCATION OR SUSPENSION
OF RESPONDENT'S CERTIFICATE (PERFORMANCE)**

48. The Commission has previously found that passenger vessel operators are not entitled to a Certificate where an operator misled Commission staff and failed to respond to lawful inquiries. *Royal Venture Cruise Line, Inc. and Anastassios Kiriakidis—Possible Violations of Passenger Vessel Certification Requirements*, 27 S.R.R. 1069 (FMC 1997).

49. The Commission will also issue cease and desist orders based on a vessel operator's inability to establish its financial responsibility. *Royal Venture Cruise Line, Inc. and Anastassios Kiriakidis—Possible Violations of Passenger Vessel Certification Requirements*, 27 S.R.R. 1069 (FMC 1997); *American Star Lines, Inc., National Transatlantic Lines of Greece S.A. and Dimitri Anninos—Possible Violations of Passenger Vessel Certification Requirements*, 25 S.R.R. 1153 (FMC 1990).

50. FAL's false statements regarding its office address establish that revocation is proper under 46 C.F.R. § 540.8(b)(1).

51. FAL's failure to timely submit quarterly independent audits for the past three years, as required by the terms of its escrow agreement, establish that FAL is no longer qualified to hold a Certificate within the meaning of 46 U.S.C. § 44102 and 46 C.F.R. § 540.8(b)(2).

52. FAL's failure to remain a Limited Liability Company in good standing with its state's authority, as warranted in its escrow agreement, establish that FAL is no longer qualified to hold a Certificate within the meaning of 46 U.S.C. § 44102 and 46 C.F.R. § 540.8(b)(2).

53. FAL's failure to comply with information and document requests by Commission staff establish that revocation is proper under 46 C.F.R. § 540.8(b)(3).

ORDER

NOW THEREFORE, IT IS ORDERED That, pursuant to 46 U.S.C. §§ 41302, 41304, 44106, and 46 C.F.R. § 540.8(c), Great Northern & Southern Navigation Co., LLC DBA French America Line is directed to show cause, within 25 days of publication of this Order in the Federal Register, why the Commission should not revoke its Certificate (Performance) inasmuch as the Certificant is otherwise not qualified to render passenger vessel services;

IT IS FURTHER ORDERED That this proceeding be limited to the submission of affidavits of fact, memoranda of law, and documentary evidence;

IT IS FURTHER ORDERED That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 68 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.68. Such petition shall be accompanied by the petitioner's memorandum of law, affidavit of fact, and documentary evidence, if any, and shall be filed no later than the date fixed below;

IT IS FURTHER ORDERED That Great Northern & Southern Navigation Co., LLC DBA French America Line be named as Respondent in this proceeding. Affidavits of fact, memoranda of law, and documentary evidence shall be filed by Respondent and any intervenors in support of Respondent no later than November 26, 2019;

IT IS FURTHER ORDERED That the Commission's Bureau of Enforcement (BOE) be made a party to this proceeding;

IT IS FURTHER ORDERED That reply affidavits, memoranda of law, and documentary evidence shall be filed by BOE and intervenors in opposition to Respondent no later than December 11, 2019;

IT IS FURTHER ORDERED That:

(a) Should any party believe that the submission of testimony or additional evidence is required, that party must submit a request together with a statement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the evidence which would be adduced, and why such testimony or other evidence cannot be submitted by affidavit; and

(b) Any request for submission of testimony or additional evidence shall be filed no later than December 11, 2019;

IT IS FURTHER ORDERED That notice of this Order to Show Cause be published in the Federal Register, and that a copy thereof be served upon Respondent at its last known address;

IT IS FURTHER ORDERED That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 2 of the Commission's Rules of Practice and Procedure, 46 C.F.R § 502.2, as well as mailed directly to all parties of record;

FINALLY, IT IS ORDERED That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.61, the final decision of the Commission in this proceeding shall be issued no later than February 27, 2020.

By the Commission.

Rachel Dickon
Secretary