

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

DIP SHIPPING COMPANY, LLC, *REVOCATION OF OCEAN
TRANSPORTATION INTERMEDIARY LICENSE NO. 018752.*

DOCKET NO. 20-04

Served: March 18, 2020

ORDER OF: Erin M. WIRTH, *Chief Administrative Law Judge.*

NOTICE AND INITIAL ORDER

On March 16, 2020, the Secretary of the Federal Maritime Commission (“FMC” or “Commission”) issued a Notice of Hearing Request and Assignment (“Notice”) noting that on February 19, 2020, the FMC’s Bureau of Certification and Licensing (“BCL”) had notified Dip Shipping Company (“Dip Shipping”) by letter that the Commission intended to revoke Dip Shipping’s ocean transportation intermediary (“OTI”) license. The Secretary also noted that on March 5, 2020, Dip Shipping had requested a hearing on the proposed revocation of its license pursuant to the Commission’s Rules at 46 C.F.R. § 515.17 and 46 C.F.R. Part 502, Subpart X. In accordance with the provisions of Subpart X’s Rule 702(a), the Secretary assigned this proceeding to the Office of Administrative Law Judges for adjudication. 46 C.F.R. § 502.702(a).

Pursuant to Rule 702(b), BCL and the Commission’s Bureau of Enforcement (“BOE”) are hereby notified of Dip Shipping’s hearing request, “and [BOE] must file with the administrative law judge and serve on [Dip Shipping] a copy of the notice given to [Dip Shipping] and a copy of BCL materials supporting the notice.” 46 C.F.R. § 502.702(b). The notice and supporting materials should be organized in an appendix as outlined below. In addition, BOE may file a brief with legal arguments, proposed findings of fact, or additional information, including requests for confidential treatment. This filing is due by April 20, 2020.

After BOE files the materials described above, Dip Shipping will be notified of its right to respond in support of continuation of its OTI license. 46 C.F.R. § 502.703. Dip Shipping should be prepared to respond within thirty days and to provide a brief with legal arguments, proposed findings of fact, additional information, and any requests for confidential treatment as well as an appendix with supporting documents.

Dip Shipping requests an oral hearing on this matter under 46 C.F.R. § 502.706. Pursuant to Rule 706, “[i]n the usual course of disposition of matters filed under this subpart, no oral hearing or argument will be held, but the administrative law judge, in their discretion, may order such hearing or argument.” 46 C.F.R. § 502.706(a). At this point in the proceeding, it is not clear that there is reason to alter the usual course of proceeding. However, in their briefs, the parties

may address whether an oral hearing is necessary for the adjudication of this proceeding. Accordingly, Dip Shipping's request for oral hearing is **DENIED WITHOUT PREJUDICE**.

In addition, the parties must abide by the following additional instructions which have been modified to accommodate telework:

ADDITIONAL INSTRUCTIONS

Filing

1. Information regarding where to find the Commission's rules of practice and procedure (46 C.F.R. Part 502), Commission decisions, and other information helpful for parties may be found in the reading room section of the Commission's website, <https://www2.fmc.gov/readingroom>.
2. Parties should review Rule 502.709 which outlines the other rules applicable to this proceeding, including filing requirements, computation of time, service, etc.
3. *Ex parte* communication (communication not in the public record) is prohibited pursuant to Rule 502.709 which states that Rule 502.11 applies to this proceeding. The decision issued shall be based on the filings made in this proceeding which will be available to all parties.
4. Parties shall file documents with the Office of the Secretary via email to secretary@fmc.gov. In addition to filing with the Secretary, the parties should courtesy copy the presiding judge via email at judges@fmc.gov and should copy the other party. No party may directly contact the presiding judge.
5. Service of the rulings, orders, and decisions in this proceeding will be by email. Parties must notify the Commission of any change of service email address.
6. *Case citations*. Because the Commission currently uses Lexis, citations to judicial opinions on Westlaw should include a parallel citation to Lexis, if possible. Citations to Commission decisions or rulings may be made to the official F.M.C. reporters including F.M.C.2d, Pike & Fischer Shipping Regulation Reports (S.R.R.), Lexis or Westlaw, or Commission slip opinions or orders by docket number, title, and date of service. If a document from another source is cited, the decision or ruling must be transmitted via email to judges@fmc.gov.
7. *Extensions*. If a party needs an extension of a deadline, they should confer with the other party to determine whether there is any opposition to the relief sought. Requests for extension should follow the procedure for non-dispositive motions found at Rule 502.71 and responses to requests for extensions should be filed promptly. 46 C.F.R. § 502.71.

Discovery

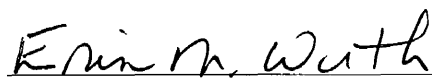
8. The parties are reminded of their obligation to ensure preservation of all relevant evidence, including electronically stored information. *Zhi Chen v. District of Columbia*, 839 F. Supp. 2d 7, 12 (D.D.C. 2011); *The Pension Comm. of the Univ. of Montreal Pension Plan v. Banc of America Securities, LLC*, 685 F. Supp. 2d 456 (S.D.N.Y. 2010); *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212 (S.D.N.Y. 2003).
9. The Administrative Law Judge issues decisions based only on the record in the proceeding. See 5 U.S.C § 556(e). If there is information available in a different office at the Commission that a party wants considered, it is the party's obligation to provide that information.

Confidential Material

10. *Personal information* – Personally identifiable information such as social security numbers, birth dates, and financial account numbers must be redacted pursuant to Commission Rule 13. 46 C.F.R. § 502.13.
11. *Requests for confidential treatment* – If confidential information is filed, it must be accompanied by a motion justifying confidential treatment. This motion must identify each item for which protection is sought and show good cause by demonstrating that the information is a trade secret or other confidential research, development, or commercial information. 46 C.F.R. § 502.141(j)(1). The burden is on the party seeking to protect the information to show good cause for its protection.
12. *Filing* – Parties should file two versions of confidential filings marked as the “confidential version” and the “public version.” The confidential version may be provided to the Presiding Officer by email but should not be filed with the Office of the Secretary by email pursuant to Commission Rule 5. 46 C.F.R. § 502.5.
13. *Marking confidential material* – In the confidential version, confidential information must be conspicuously and clearly marked on each page, for example by highlighting or braces. The public version must indicate on the cover page and on each affected page “Public version – confidential materials excluded.” The public version must clearly indicate any omissions, for example with blackout or braces, and its pagination and depiction of text on each page must be identical to that of the confidential version. For example, the confidential filing may read: “On January 1, 2010, Complainant entered into a {25} year lease with respondent for a monthly rent of {\$1000}.” The public version would read: “On January 1, 2010, Complainant entered into a {█} year lease with Respondent for a monthly rent of {█}.”
14. *Exhibits* – Confidential information in exhibits should be marked as above. If marking within the text is not feasible, individual pages may be replaced in the public version with a page indicating that confidential material was excluded. Entire exhibits should not be excluded, only those pages containing confidential material.

Brief and Appendix

15. **[Party's] Brief and Proposed Findings of Fact.** Each party shall file a brief meeting the requirements of Commission Rule 214, 46 C.F.R. § 502.214. The parties should include all arguments relevant to their claim, including arguments that have been made previously. Proposed findings of fact shall be provided in numbered paragraphs. Each factual proposition shall be followed by a citation to a specific, unique page number in the appendix with the evidence that the party contends will support the proposed finding of fact.
16. The parties shall send a courtesy copy of their Brief in a word-processing format (such as Word) to the Office of Administrative Law Judges at judges@fmc.gov with the other party copied. Word processing versions should not be submitted to the Office of the Secretary.
17. **[Party's] Appendix.** The evidence on which a party's proposed findings of fact or response to another party's proposed findings of fact is based shall be included in an appendix—a separate document that collects one copy of all documents relevant to the proceeding.
18. The cover of the appendix shall identify the party or parties that prepared the appendix. The appendix must begin with a table of contents identifying the page at which each individual document begins.
19. Each page in the appendix shall be numbered sequentially, for example: Complainant Exhibit 1, Complainant Exhibit 2, or Respondent Exhibit 1, Respondent Exhibit 2, etc. Contact the Office of the Secretary if the appendix is too large to email.
20. Each party shall ensure that all documents in its appendix are legible and in English or include a verified translation as required by Rule 7 (*see* 502 C.F.R. § 502.7).
21. The parties must cite to a document in an appendix already in the record rather than include the same document in its own appendix. For instance, if Respondent contends that a document included in Complainant's appendix rebuts the evidence Complainant claims supports a proposed finding of fact, Respondents shall cite to Complainant's appendix rather than include a second copy of the same document in its appendix.


Erin M. Wirth
Chief Administrative Law Judge