

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

ACME FREIGHT SERVICES CORP., *Complainant*

v.

TOTAL TERMINALS INTERNATIONAL, LLC, *Respondent*.

DOCKET NO. 22-07

Served: June 29, 2022

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

SCHEDULING ORDER

On June 27, 2022, the parties filed a joint status report with a proposed schedule. The parties state that they have exchanged initial disclosures and contacted the Commission's Office of Consumer Affairs and Dispute Resolution Services (CADRS) regarding whether the matter may be resolved through mediation. Additionally, the parties intend to confer regarding stipulations relating to the treatment of confidential documents and information as they pertain to this case and will submit a proposed protective order to the Presiding Judge.

The discovery schedule proposed by the parties is reasonable. However, dispositive motions at the close of discovery are disfavored in Commission proceedings as it is more efficient to proceed directly to briefing where factual disputes can be resolved. The parties' proposed deadlines are maintained for briefing. Note that due to the Commission's deadline of March 21, 2023, to resolve this proceeding, delays during discovery may result in shortening the briefing period. Accordingly, the parties are hereby **ORDERED** to follow this schedule:

July 8, 2022	Parties exchange initial written discovery requests.
August 8, 2022	Parties submit objections and responses to initial discovery requests and, if applicable, privilege logs.
September 12, 2022	Depositions of fact and expert witnesses begin.
September 19, 2022	Parties submit initial expert reports.
October 3, 2022	Last day for submission of written discovery.
October 19, 2022	Parties submit rebuttal expert reports.
November 1, 2022	Parties complete all fact and expert depositions.
November 7, 2022	Close of discovery.
December 12, 2022	Complainant's brief, proposed findings of fact, and appendix.

- January 16, 2023 Respondent’s opposition brief, responses to proposed findings of fact, proposed findings of fact, and appendix.
- January 30, 2023 Complainant’s reply brief and responses to proposed findings of fact.

Motions will not automatically stay other deadlines in the proceeding. If a motion could impact other deadlines, that should be clearly addressed in the motion and any response. All requests for extension of time will be reviewed for good cause, even if the parties agree on the requested extension. Pursuant to the Howard Coble Coast Guard and Maritime Transportation Act of 2014 and Commission Docket No. 15-06, attorney fees may be awarded to any prevailing party in a complaint proceeding. It is therefore in the best interest of the parties to proceed expeditiously.

The parties are reminded that a “scheduling order ‘is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril.’” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992) (quoting *Gestetner Corp. v. Case Equipment Co.*, 108 F.R.D. 138, 141 (D. Me. 1985)). Moreover, “[p]arties cannot control an agency’s docket or procedures through agreement among themselves.” *Simmons v. United States*, 698 F.2d 888, 893 (7th Cir. 1983). The authority of courts to control their dockets is well settled. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-31 (1962); *United States v. Hughey*, 147 F.3d 423, 429 (5th Cir. 1998).

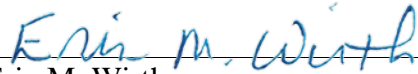
Any filing submitted without page numbers, including on exhibits, may be rejected. The parties’ briefs, proposed findings of fact, responses to proposed findings of fact, and appendices shall be in the following forms:

1. **[Party’s] Brief.** Each party shall file a brief meeting the requirements of Commission Rule 214, 46 C.F.R. § 502.214, with the exception that the proposed findings of fact and responses to the proposed findings of fact shall not count toward the page limit found in Rule 214(e).
2. **[Party’s] Proposed Findings of Fact.** This document shall set forth proposed findings of fact in numbered paragraphs. Each paragraph shall be limited, as nearly as practicable, to a single factual proposition. Each factual proposition shall be followed by an exact citation to evidence that the party contends will support the proposed finding of fact; e.g., a page number in the appendix. The party shall provide to each other party and to the Office of Administrative Law Judges an electronic copy of its proposed findings of fact with the hard copy of its proposed findings of fact. The electronic copy shall be in a word-processing format (e.g., Microsoft Word) and provided by email.
3. **[Party’s] Responses to [Party’s] Proposed Findings of Fact.** This document shall set forth verbatim each proposed finding of fact in another party’s proposed findings of fact, then admit or deny the proposed finding. Each proposed finding of fact that an opposing party denies shall be followed by an exact citation to evidence that the opposing party contends will rebut the evidence the proposing party claims supports the proposed finding of fact. The opposing party shall provide to the party and to the Office of Administrative Law Judges an electronic copy of the response to [Party’s] proposed findings of fact with

the hard copies of the response to [Party's] proposed findings of fact. The electronic copy shall be in a word-processing format (e.g., Microsoft Word) and provided by email.

4. **[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. The cover of the appendix shall identify the party or parties that prepared the appendix;
 - b. The appendix should be in one PDF document, if practicable. The pages of the appendix shall be numbered sequentially, for example CX 1, CX 2 or RX 1, RX 2, etc.;
 - c. The appendix must begin with a table of contents identifying the page at which each individual document begins and each exhibit should be clearly identified, for example, by a cover sheet or bookmark;
 - d. 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); and
 - e. The parties are instructed to 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 Complainants' appendix rebuts the evidence Complainant claims supports a proposed finding of fact, Respondent shall cite to Complainants' appendix rather than include a second copy of the same document in its own appendix.

The parties are directed to consult with each other to determine the most practicable way to send electronic copies of documents in a word-processing format to each other. The parties are directed to email the electronic copy in a word-processing format of required documents to the Office of Administrative Law Judges at the following email address: judges@fmc.gov, with opposing counsel copied. Word processing versions should not be submitted to the Office of the Secretary.



Erin M. Wirth
Chief Administrative Law Judge