

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

PORTS AMERICA CHESAPEAKE, LLC AND MARINE
TERMINALS CORPORATION-EAST, *Complainants*

v.

APS EAST COAST, INC., *Respondent.*

DOCKET NO. 23-04

Served: September 15, 2023

ORDER OF: Alex M. CHINTELLA, *Administrative Law Judge.*

SCHEDULING ORDER

On September 12, 2023, the parties filed a joint status report and proposed discovery schedule. The parties state that they “do not believe that settlement discussions or mediation would be productive at this time, but should that change, the Parties are amenable to conferring with the Commission’s Office of Consumer Affairs and Dispute Resolution Services (CADRS) in the future.” The parties are reminded that the preliminary conference with CADRS is mandatory. 46 C.F.R. § 502.64. The joint status report is unclear as to whether the parties contacted CADRS regarding the mandatory preliminary conference, and so they are hereby **ORDERED** to file a supplemental joint status report confirming they have done so by the date below. The parties are reminded *not* to state their respective positions on whether to agree to mediation or their settlement positions in communication with the undersigned.

Both parties requested an oral hearing in their pleadings. Pursuant to Commission Rules 62(a)(5) and 62(b)(3), the “presiding officer will determine whether an oral hearing is necessary.” 46 C.F.R. § 502.62(a)(5), (b)(3). At this point in the proceeding, it is not clear that an oral hearing is necessary. Accordingly, the parties’ requests for an oral hearing are **DENIED WITHOUT PREJUDICE**.

The discovery schedule proposed by the parties is reasonable, allows for completion of all discovery within 150 days of the service of Respondent’s answer, and is hereby adopted. To make the discovery process more efficient, the parties are encouraged to agree to limitations on discovery and stipulations of facts. The parties are also encouraged to review the Initial Order for instructions related to confidential information. For example, parties may not mark entire depositions as confidential, so they should ask questions that may require confidential responses together, typically at the end of the deposition. To assist the parties with scheduling, a briefing schedule has also been included.

The parties are hereby **ORDERED** to follow this schedule:

- September 15, 2023 Exchange Initial Disclosures.
- September 29, 2023 Service of written discovery requests.
- September 29, 2023 Joint Status Report confirming parties have contacted CADRS in accordance with Commission Rule 64.
- October 30, 2023 Discovery responses due and document productions complete.
- November 27, 2023 Fact depositions begin.
- December 8, 2023 Fact depositions completed.
- January 8, 2024 Complainant's brief, proposed findings of fact, and appendix.
- February 7, 2024 Respondents' opposition brief, responses to proposed findings of fact, proposed findings of fact, and appendix.
- February 21, 2024 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. Parties must follow the instructions in the Initial Order, including the requirements for submitting confidential information. Parties may be required to refile any documents that do not follow the requirements below or in the Initial Order.

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). The brief should cite to evidence in the appendix using the required sequential numbers (see below).

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.

Alex M. Chintella
Administrative Law Judge