

**FEDERAL MARITIME COMMISSION**  
**Office of Administrative Law Judges**

COAST CITRUS DISTRIBUTORS D/B/A OLYMPIC FRUIT & VEGETABLE; AMAZON PRODUCE NETWORK, LLC; REFIN TROPICALS, S.A.; JW FRESH, S.A.; SEMBRÍOS DE EXPORTACIÓN SEMBRIEXPORT, S.A.; AND BRESSON S.A.,  
*Complainants*

**DOCKET NO. 23-06**

v.

NETWORK SHIPPING LTD., INC., *Respondent*.

Served: September 29, 2023

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

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**SCHEDULING ORDER**

This case began on August 3, 2023, when the Commission issued a Notice of Filing and Complaint. On August 10, 2023, an Initial Order was issued which stated:

The parties must submit a joint status report with proposed schedule, as outlined below, within fifteen days of the service of the answer. In the joint status report, the parties must submit a joint proposed schedule that completes discovery within 150 days of service of the answer and allows issuance of the initial decision within one year.

Initial Order at 1.

On August 16, 2023, Respondent filed a motion requesting a five-week extension of time to respond to the complaint. On August 17, 2023, Respondent was given a fifteen-day extension of time to September 12, 2023. The order further stated: "As required by the Initial Order, parties must submit a joint status report with proposed schedule within fifteen days of the service of the answer. Counsel should only request extensions when necessary and should endeavor to meet all deadlines in this proceeding." Order on Motion for Extension of Time to File Answer at 1.

Respondent filed its answer timely on September 12, 2023, so the required joint status report with proposed schedule was due on September 27, 2023. On the afternoon of September 28, 2023, the Office of Administrative Law Judges sent the parties an email stating:

We expected to receive a joint status report with proposed schedule, as required by both the Initial Order and Order on Motion for Extension of Time to File Answer, yesterday. Kindly file the joint status report as soon as possible and no

later than September 29, 2023 at 10 am ET. As a reminder, courtesy copies of all filings must be sent to this email address. Thank you.

Sept. 23, 2023, email.

To date, no joint status report with proposed schedule has been received by the Office of Administrative Law Judges. Indeed, we have received no communication from the parties since the answer was filed. As explained previously: “The Commission set a deadline for this case to be resolved within one year. Delays at the beginning of the proceeding create additional time pressure later in the proceeding and should be minimized. Moreover, agreements between the parties will not extend deadlines.” Order on Motion for Extension of Time to File Answer at 1.

Accordingly, a schedule will be implemented without the parties’ input. The schedule includes a deadline for a joint status report. In the joint status report, the parties should indicate whether or not they have contacted CADRS, but not their settlement positions. They should identify discovery that has already been completed, such as initial disclosures, and should outline any discovery agreements they have made. The parties are also encouraged to consider stipulations of facts as that can reduce the need for discovery.

The parties may agree to add additional deadlines, for example adding deadlines within this schedule for expert reports and depositions, if needed. The parties may not alter the deadlines below by agreement between each other. If parties fail to meet deadlines, they may be subject to dismissal for failure to prosecute or by default. 46 C.F.R. §§ 502.65. 502.72(b).

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

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|------------------|---|
| October 10, 2023 | Initial requests for discovery issued. Parties file a joint status report.                                      |
| November 9, 2023 | Responses to initial discovery requests due.  |
| January 10, 2024 | Last day to serve discovery requests.   |
| January 26, 2024 | All depositions completed   |
| February 9, 2024 | Close of all discovery.   |
| March 8, 2024    | Complainant’s brief, proposed findings of fact, and appendix.   |
| April 5, 2024    | Respondent’s opposition brief, responses to proposed findings of fact, proposed findings of fact, and appendix. |
| April 19, 2024   | Complainant’s reply brief and responses to proposed findings of fact.   |

Motions and settlement discussions 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).

The parties are encouraged to discuss settlement of this proceeding. However, such discussion will not stay other deadlines in the proceeding as engaging in discovery could provide evidence that assists the parties in resolving their differences, and excessive delay in starting the process could hinder the parties’ efforts. If a settlement is reached, the parties must file a motion requesting approval of it along with a copy of the settlement. 46 C.F.R. § 502.72(a)(3).

The parties should note that the Commission recently switched to Westlaw. Citations to opinions on Lexis should include a parallel citation to Westlaw, if possible. Citations to Commission decisions may be made to official reporters including F.M.C., F.M.C.2d, Pike & Fischer Shipping Regulation Reports (S.R.R.), Westlaw, or Commission slip opinions. Every citation to a Commission case should include the case name, docket number, level (FMC or ALJ) and exact date of service (month/day/year). Selected FMC cases, including F.M.C. from 1919-1987 and F.M.C.2d from 2018 to present are available at [www.fmc.gov/activity-logs](http://www.fmc.gov/activity-logs). If a document from another source is cited, the decision or ruling must be transmitted via e-mail to [judges@fmc.gov](mailto:judges@fmc.gov).

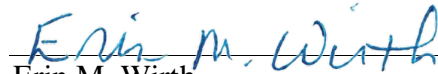
In addition, any filing submitted without page numbers, including on exhibits, may be rejected. The parties’ briefs, proposed findings of fact, responses to proposed findings of fact, and appendices shall be in the following forms:

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](mailto: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