

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

OL USA LLC, *Complainant*

v.

MAERSK A/S, *Respondents*.

DOCKET NO. 24-11

Served: March 20, 2024

ORDER OF: Linda S. Harris CROVELLA, *Administrative Law Judge*.

SCHEDULING ORDER

On February 14, 2024, the Commission issued a Notice of Filing of Complaint and Assignment (“Notice”) for this proceeding. On March 1, 2024, Respondent Maersk A/S (“Maersk”) filed an Answer. On March 18, 2024, the parties submitted a Joint Status Report and Proposed Discovery Schedule (“JSR1”).

The JSR1 indicates that the parties have not yet exchanged initial disclosures, they have not consulted with CADRS, and they do not propose a briefing schedule. The parties did not state in the JSR1 whether they have discussed the proportionality of discovery, the burden and expense of discovery, or the discovery of electronically stored information. The parties propose starting discovery two months after the answer was filed.

The parties should have exchanged initial disclosures prior to the filing of the JSR1 (by March 8, 2024), as set forth in the Commission Rules and as was reiterated in the Initial Order. 46 C.F.R. § 502.141(b); Initial Order at 2. The proposed schedule does not provide for initial disclosures until nearly a month after the required date. This delay is not explained or warranted, and the parties must exchange initial disclosures by the date below.

Similarly, the Initial Order states and the Commission Rules require that:

Within fifteen days of the service of a respondent’s answer, the parties “must participate in a preliminary conference with the Commission’s Office of Consumer Affairs and Dispute Resolution Services (CADRS) as to whether this matter may be resolved through mediation. The preliminary conference may be conducted either in person or via telephone, video conference, or other forum.” 46 C.F.R. § 502.64. ...**In the joint status report, the parties must state whether each party has contacted CADRS and whether the parties have agreed to engage in mediation.**

Initial Order at 1 (emphasis added); 46 C.F.R. § 502.64(1), (2). Since the parties have not participated in a preliminary conference with CADRS, they are ordered to do so by the date below.

Complainant requests an oral hearing in this matter. Pursuant to 46 C.F.R. § 502.62 (a)(5), “[t]he presiding officer will determine whether an oral hearing is necessary.” At this point in the proceeding, it is not clear that there is reason to conduct an oral hearing. Accordingly, Complainant’s request for oral hearing is **DENIED**.

Complainant further requests an investigation of alleged violations of the Shipping Act. A request for investigation should be directed to the appropriate Area Representative and is not a proper remedy under the Commission’s Rules of Practice and Procedure at 46 C.F.R. § 502.62(a)(4)(iv). For further information, see <https://www.fmc.gov/resources-services/filing-a-shipping-act-complaint> (scroll to “resources”, “related links”, and click on “Exploring Commission Processes: The differences between contacting CADRS, filing a complaint and reporting violations”).

The parties should review and follow the Initial Order and familiarize themselves with the Commission’s Rules.

The proposed discovery schedule is adopted only as indicated below. To assist the parties with scheduling, a briefing schedule and a joint status report have been added to the schedule.

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

March 22, 2024	Exchange Initial Disclosures
March 29, 2024	Contact CADRS to Schedule preliminary Conference
April 5, 2024	Service of Discovery Requests
June 3, 2024	Discovery Responses Due and Completion of Document Production
June 10, 2024	Joint Status Report Due
June 17, 2024	Begin Fact Depositions
July 29, 2024	Close of Discovery
August 26, 2024	Complainant’s brief, proposed findings of fact, and appendix
September 23, 2024	Respondent’s opposition brief, responses to proposed findings of fact, proposed findings of fact, and appendix
October 7, 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. 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.



Linda S. Harris Crovella
Administrative Law Judge