

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

ACCESS ONE TRANSPORT, INC., *Complainant*

v.

COSCO SHIPPING LINES CO. LTD., *Respondent*.

DOCKET NO. 24-13

Served: July 3, 2024

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

SCHEDULING ORDER

On June 27, 2024, the parties filed a joint status report and proposed discovery schedule (“JSR”). The parties state that they have had a conference with the Commission’s Office of Consumer Affairs and Dispute Resolution Services and have an additional conference scheduled. JSR at 2. Initial disclosures should have already been exchanged. JSR at 1.

The parties’ provide both a discovery and briefing schedule which are reasonable. Parties shall serve objections and responses to written discovery requests per 46 C.F.R. §§502.145, 502.146, and 502.147(b)(2) thirty days after service of discovery unless a shorter timeframe is needed to meet the deadlines below. The last two deadlines were adjusted to accommodate a federal holiday.

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

- | | |
|--------------------|--|
| July 19, 2024 | Parties may serve initial written discovery requests as early as July 12, 2024, but in any event will serve initial discovery no later than July 19, 2024. |
| August 26, 2024 | Depositions of fact witnesses may begin to be noticed. Depositions may be conducted virtually, if practical. |
| September 6, 2024 | Complainant to identify expert witnesses, if any. |
| September 13, 2024 | Complainant to serve initial expert reports, if any. |
| September 27, 2024 | Respondent to identify rebuttal expert witnesses, if any. |
| October 4, 2024 | Expert depositions may begin to be noticed, if any. |
| October 15, 2024 | Last date to serve written discovery requests. |
| October 18, 2024 | Respondent to serve rebuttal expert reports, if any. |
| November 15, 2024 | Complete depositions of fact and expert witnesses. |

- November 15, 2024 Discovery ends.
- December 13, 2024 Complainant’s brief, proposed findings of fact, and appendix due.
- January 21, 2025 Respondents’ opposition brief, responses to proposed findings of fact, proposed findings of fact, and appendix due.
- February 4, 2025 Complainant’s reply brief and responses to proposed findings of fact due.

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, while delays hinder the parties’ progress. 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).

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.

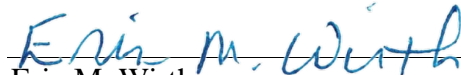
The parties are reminded that a “scheduling order ‘is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril.’” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992) (quoting *Gestetner Corp. v. Case Equipment Co.*, 108 F.R.D. 138, 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).

The parties should note that the Commission utilizes 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, 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. If a document from another source is cited, the decision or ruling must be transmitted via e-mail to 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* 46 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 Initial Order has additional requirements, including for submitting confidential material. 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