

(S E R V E D)
(SEPTEMBER 3, 2013)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 09-08

SSA TERMINALS, LLC, and SSA TERMINALS (OAKLAND), LLC

v.

**THE CITY OF OAKLAND, Acting By And Through
Its BOARD of PORT COMMISSIONERS**

ORDER TO SUPPLEMENT THE RECORD

This matter is before the Federal Maritime Commission (Commission or FMC) on a Notice of Commission Determination to Review pursuant to 46 CFR § 502.227. The parties filed a Notice of Voluntary Dismissal with prejudice, signed and stipulated to by both parties pursuant to 46 CFR § 502.72(a)(1). The Commission has, however, received information that suggests the voluntary dismissal is based on a settlement agreement entered into by the parties. No settlement agreement was submitted to the Administrative Law Judge (ALJ) for approval prior to the dismissal.

Settlement is strongly encouraged in administrative proceedings and is embodied in the Administrative Procedure Act (APA) and in the Commission's precedent and rules. *Behring International, Inc.*, 20 S.R.R. 1025, 1032-1033 (ALJ 1981); *Pennsylvania Gas & Water Co. v. Federal Power Comm'n*, 463 F.2d 1242, 1247 (D.C. Cir. 1972)). The Commission favors settlements that "result in a savings of time for the parties, the lawyers, and the courts and it is thus advantageous to judicial administration." *Old Ben Coal Co. v. Sea-Land Serv., Inc.* (*Old Ben*

Coal), 18 S.R.R. 1085, 1092 (1978). The Commission has a long-standing history of reviewing settlement agreements to assure that they accord with law and public policy. *Id*; *see also Ellenville Handle Works v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (1981).

Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR § 502.72, recently revised and effective as of November 12, 2012, expressly authorizes voluntary dismissals by a complainant. In response to a comment requesting that the Commission dispense with review of settlement agreements, the Commission stated in the supplementary information to the Final Rule that it "did not intend to eliminate the requirement for review of settlement when it proposed the new rule and is not changing its long-standing policy at this time." Docket No. 11-05, Rules of Practice and Procedure, *Final Rule*, 77 FR 61519 (Oct. 10, 2012).

Accordingly, the parties are hereby instructed to file a copy of the settlement agreement, if any, with the ALJ on or before September 10, 2013. If the parties did not enter into a settlement agreement in this proceeding, the parties are instructed to so indicate. The ALJ is hereby ordered to issue an Initial Decision on or before October 10, 2013.

By the Commission.

Rachel E. Dickon
Assistant Secretary