

FEDERAL MARITIME COMMISSION

DOCKET NO. 11-15

CITGO REFINING AND CHEMICALS COMPANY L.P.

v.

PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS

**INITIAL DECISION APPROVING SETTLEMENT AGREEMENT
AND DISMISSING THE COMPLAINT¹**

I.

On June 27, 2012, complainant Citgo Refining & Chemicals Company L.P. (“Citgo”) and respondent Port of Corpus Christi Authority of Nueces County, Texas (“Port”) filed a Joint Motion for Approval of Settlement Agreement and Dismissal of the Complaint with Prejudice (“Motion”), attaching the Agreement of Settlement and Release.

II.

The Notice of Filing of Complaint and Assignment was issued on September 2, 2011. Citgo asserts that the Port violated and continues to violate the Shipping Act of 1984, 46 U.S.C. §§ 41106(2) and (3) and 41102(c). Citgo alleges that the Port subjected Citgo to an undue or unreasonable prejudice or disadvantage; granted an undue preference or advantage with respect to certain users of its facilities; and failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Complaint at 2. Citgo seeks a cease and desist order and reparations. Complaint at 12.

Respondent filed a motion to dismiss the complaint asserting multiple jurisdictional arguments, including Eleventh Amendment sovereign immunity. Complainant filed a response arguing that the case should not be dismissed on jurisdictional grounds.

¹ This Initial Decision will become the decision of the Commission in the absence of review by the Commission. 46 C.F.R. § 502.227.

Both parties are represented by counsel. In the motion, the parties state:

Complainant believes it would prevail on the allegations set forth in its Complaint. Respondent believes that it would prevail on its lack of jurisdiction arguments, and that even if the FMC asserted jurisdiction that Respondent would successfully defeat the allegations set forth in the Complaint.

Notwithstanding these beliefs, the parties recognize the potential extremely high remaining costs of this litigation and the inherent uncertainties in heavily disputed litigation and the parties agreed to conduct discussions to see if the issues and the Complaint could be resolved. The settlement agreement that accompanies this Motion is the result of these discussions among the parties and reflects each party's view of the case and is submitted to the Presiding Officer for approval.

Motion at 2.

III.

Using language borrowed in part from the Administrative Procedure Act,² Rule 91 of the Commission's Rules of Practice and Procedure gives interested parties an opportunity, *inter alia*, to submit offers of settlement "where time, the nature of the proceeding, and the public interest permit." 46 C.F.R. § 502.91(b).

The Commission has a strong and consistent policy of "encourag[ing] settlements and engag[ing] in every presumption which favors a finding that they are fair, correct, and valid." *Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc.*, 29 S.R.R. 975, 978 (ALJ 2002), quoting *Old Ben Coal Co. v. Sea-Land Serv., Inc.*, 18 S.R.R. 1085, 1091 (ALJ 1978) (*Old Ben Coal*). See also *Ellenville Handle Works, Inc. v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (ALJ 1981).

The law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation, and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy. . . . The courts have considered it their duty to encourage rather than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims. . . . The desire to uphold compromises and settlements is based upon various advantages which they have over litigation. The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole. Moreover, the use of compromise and settlement is conducive to amicable and peaceful relations between the parties to a controversy.

² "The agency shall give all interested parties opportunity for – (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit." 5 U.S.C. § 554(c).

Old Ben Coal, 18 S.R.R. at 1092 (quoting 15A American Jurisprudence, 2d Edition, pp. 777-78 (1976)).

“While following these general principles, the Commission does not merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate their litigation.” *Id.* However, if “a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval.” *Old Ben Coal*, 18 S.R.R. at 1093. “[I]f it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement.” *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia – New Zealand Conf. and Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted).

“Reaching a settlement allows the parties to settle their differences, without an admission of a violation of law by the respondent, when both the complainant and respondent have decided that it would be much cheaper to settle on such terms than to seek to prevail after expensive litigation.” *APM Terminals North America, Inc. v. Port Authority of New York and New Jersey*, 31 S.R.R. 623, 626 (FMC 2009) (citing *Puerto Rico Freight Sys. Inc. v. PR Logistics Corp.*, 30 S.R.R. 310, 311 (ALJ 2004)).

The parties have reviewed the relevant documents, engaged in months of discussions and negotiations, and determined that the mutual concessions made fairly address the outstanding issues between them. The parties contend that this private party litigation “may be destined, with the jurisdiction issues involved, for many years of proceedings not only before the FMC but potentially before the courts.” Motion at 4. In reaching the agreement, the parties weighed the litigative probabilities and the probability that this proceeding will continue to be complicated, time consuming, and costly. Motion at 4.

Based on the representations in the motion, the agreement of settlement and release, and other documents filed in this matter, the parties have established that the agreement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable. Accordingly, the proposed settlement agreement is approved.

IV.

Upon consideration of the motion, the settlement agreement, and the record, and good cause having been stated, it is hereby:

ORDERED that the joint motion for approval of settlement agreement between Citgo Refining and Chemicals Co. L.P., and the Port of Corpus Christi Authority of Nueces County, Texas be **GRANTED**. It is

is **FURTHER ORDERED** that all other pending motions be **DISMISSED AS MOOT**. It

FURTHER ORDERED that this proceeding be **DISMISSED WITH PREJUDICE**.

Erin M. Wirth

Erin M. Wirth
Administrative Law Judge