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October 5, 2016					
FEDERAL MARITIME COMMISSION					

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 12-02**

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**MAHER TERMINALS, LLC**

**v.**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

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**ORDER REFERRING THIS PROCEEDING TO THE COMMISSION**

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On September 30, 2016, complainant Maher Terminals, LLC (“Maher”) and respondent The Port Authority of New York and New Jersey (“Port Authority”) filed a joint motion seeking approval of a settlement agreement, dismissal with prejudice, and a stay. The caption of the motion indicates that it is being filed both in this proceeding and in a related proceeding, FMC Docket 08-03, which is currently pending before the Commission.

The motion seeks approval of a comprehensive settlement agreement resolving both Dockets 12-02 and 08-03, contingent dismissal of both proceedings, and a stay of both proceedings. Motion at 10-11. The settlement is contingent upon acquisition of Maher by a non-party purchaser. Motion at 11. The parties anticipate that both proceedings will be restored to their pre-settlement positions if the acquisition does not occur. Motion at 11. It appears that the settlement will not be effective if the Commission does not approve the settlement agreement or any of its terms and conditions or the purchaser does not acquire Maher by November 24, 2016. Motion at Attachment B (Settlement Agreement) at 2-3.

Pursuant to Rule 69, “all motions must be addressed to and ruled upon by the presiding officer unless the subject matter of the motion is beyond his or her authority, in which event the matter must be referred to the Commission.” 46 C.F.R. § 502.69.

The complaints in the 12-02 and 08-03 proceedings both allege violations of the Shipping Act related to the lease between the parties. That lease appears to be amended by the settlement agreement. Motion at 2. The Commission is familiar with the 12-02 proceeding, which it remanded to the undersigned on December 18, 2015, for resolution of four remaining counts. The proceeding in Docket 12-02 has only made limited progress and has been stayed for the last two months while the parties negotiated this settlement. The proceeding in Docket 08-03 is currently pending before the Commission and dismissal of that proceeding is beyond the authority of the undersigned. The comprehensive settlement resolves all issues in both proceedings, amends the lease at issue in both proceedings, and was filed as one comprehensive motion in both proceedings. Moreover, the settlement is contingent upon a commercial transaction with a short deadline. Accordingly, referral of this proceeding to the Commission for determination of the motion is necessary.

For the reasons stated above, it is hereby **ORDERED** that this proceeding be referred to the Commission.

A handwritten signature in blue ink that reads "Erin M. Wirth". The signature is written in a cursive style and is positioned above a horizontal line.

Erin M. Wirth  
Administrative Law Judge