

S E R V E D  
October 21, 2014  
FEDERAL MARITIME COMMISSION

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 14-02**

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**OCEANIC BRIDGE INTERNATIONAL, INC. – POSSIBLE VIOLATIONS OF  
SECTION 10(a)(1) OF THE SHIPPING ACT OF 1984**

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**INITIAL DECISION ON DEFAULT<sup>1</sup>**

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On February 21, 2014, the Commission commenced this proceeding by issuing an Order of Investigation and Hearing alleging violations of the Shipping Act of 1984 (Shipping Act) by respondent Oceanic Bridge International, Inc. (Oceanic Bridge). *Oceanic Bridge International, Inc. – Possible Violations of Section 10(a)(1) of the Shipping Act of 1984*, FMC No. 14-02 (FMC Feb. 21, 2014) (Order of Investigation and Hearing). The Commission named the Bureau of Enforcement (BOE) as a party to the proceeding. *Id.* at 5. The Order of Investigation and Hearing alleges that Oceanic Bridge violated section 10(a)(1)<sup>2</sup> of the Act, 46 U.S.C. § 41102(a), by knowingly and willfully obtaining or attempting to obtain transportation at less than the rates and charges otherwise applicable. As explained more fully below, Oceanic Bridge has not filed an answer to the Order of Investigation and Hearing, responded to an order to show cause why an initial decision on default should not be entered against it, or responded to BOE’s motion for decision on default and supplemental filings. Accordingly, Oceanic Bridge is (1) found to be in default; (2) found to have violated the Act; and (3) assessed a civil penalty of \$392,000.00. BOE does not seek a cease and desist order.

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<sup>1</sup> The initial decision will become the decision of the Commission in the absence of review by the Commission. Any party may file exceptions to this decision within twenty-two days of the date of service. 46 C.F.R. § 502.227.

<sup>2</sup> “On October 14, 2006, the President signed a bill reenacting the Shipping Act as positive law. The bill’s purpose was to ‘reorganize[e] and restat[e] the laws currently in the appendix to title 46. It codifies existing law rather than creating new law.’ H.R. Rep. 109-170, at 2 (2005). The Commission continues to cite provisions of the Act by their former section references . . .” *Shipco Transport, Inc. v. Jem Logistics, Inc., et al.*, FMC No. 12-06, Order at 3 n.2 (FMC Aug. 21, 2013) (Order Affirming Initial Decision on Default). I follow that practice in this Initial Decision.

This decision is divided into five parts. Part I sets forth the background. Part II sets forth the controlling authority. Part III sets forth the findings of fact on which the decision is based. Part IV sets forth the reasons Oceanic Bridge is found to be in default. Part V sets forth the conclusions of law.

## I. INTRODUCTION AND BACKGROUND.

### A. Order of Investigation and Hearing.

The Order of Investigation and Hearing alleges that from May 1999 through at least March 26, 2013, Oceanic Bridge operated as a licensed, tariffed, and bonded ocean transportation intermediary (OTI) providing service as a non-vessel-operating common carrier (NVOCC) (FMC Org. No. 013355). The Order alleges that on at least forty-nine shipments while operating as an NVOCC, Oceanic Bridge accessed service contracts between Maersk Line and another entity, Dalian Haiqiao Enterprises Co., Ltd. (Dalian Haiqiao) to obtain transportation of cargo by water from China to the United States.<sup>3</sup> Dalian Haiqiao was the only shipper identified in its service contracts and Oceanic Bridge was not a signatory or named in the service contracts in any capacity. When it made the shipments, Oceanic Bridge had its own service contracts with Maersk Line. The Order alleges that on each of the forty-nine shipments, the rates stated in the Oceanic Bridge contracts were higher than the rates Oceanic Bridge paid pursuant to the Dalian Haiqiao contracts. The Order alleges that on each of the forty-nine shipments, Oceanic Bridge violated section 10(a)(1).

On February 21, 2014, the Commission's Office of the Secretary sent the Order of Investigation and Hearing to Tong Tang, Oceanic Bridge's agent for service of process, East Gale Ave., #233, City of Industry, CA 91748, by United Parcel Service (UPS). According to Commission records and Oceanic Bridge's bills of lading, the offices of Oceanic Bridge are located at 18725 East Gale Ave., Suite 233, City of Industry, CA 91748. The UPS proof of delivery indicates that UPS delivered the package on February 24, 2014, at 10:04 A.M. and that a person named Cindy signed for it. Commission rules required Oceanic Bridge to file its answer or otherwise respond within twenty-five days after the date of service, or by March 18, 2014. 46 C.F.R. § 502.63(b). Oceanic Bridge did not file an answer.

On February 25, 2014, the Office of Administrative Law Judges issued and served the Notice of Assignment and an Initial Order on the parties. The Initial Order required the parties to submit a joint status report with a proposed schedule regarding discovery within twenty days of the service of the answer. *Oceanic Bridge – Possible Violations*, FMC No. 14-02 (ALJ Feb. 25, 2014) (Initial Order). BOE's counsel states that on numerous occasions after service of the Order of Investigation and Hearing and the Initial Order, he communicated

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<sup>3</sup> The Order alleges that Oceanic Bridge received transportation services under only one Dalian Haiqiao-Maersk Line service contract. As BOE states in its motion, Oceanic Bridge received transportation services under two Dalian Haiqiao-Maersk Line contracts.

with an individual purportedly authorized by Respondent to negotiate with BOE in an effort to settle the matter. Those communications commenced after issuance of the Commission's Order and lasted until shortly after [R]espondent's answer was due. On several occasions, [BOE's counsel] requested from this individual the name of Oceanic Bridge's representative who would formally represent [R]espondent in this proceeding in view of the approaching dates for actions set forth in the Commission's Order and the Initial Order. Those requests went unanswered. All such communications ceased March 27, 2014.

(Bureau of Enforcement's Statement Regarding Joint Status Report at 2.) The parties did not file the required joint status report.

On April 18, 2014, BOE filed an individual status report. BOE stated that on March 14, 2014, it served discovery on Oceanic Bridge with responses required within thirty days. BOE stated that Oceanic Bridge had not responded to the discovery. BOE contended that a notice of default and order to show cause should be issued and that if Oceanic Bridge failed to respond adequately, an initial decision on default should be entered against Oceanic Bridge. (BOE Status Report.)

**B. Notice of Default and Order to Show Cause.**

On April 22, 2014, a Notice of Default and Order to Show Cause was issued. The Notice and Order required Oceanic Bridge: (1) to file an answer to the Order of Investigation and Hearing; and (2) to show cause why a decision on default should not be entered against it. *Oceanic Bridge – Possible Violations*, FMC No. 14-02 (ALJ Apr. 22, 2014) (Notice of Default and Order to Show Cause). The Office of Administrative Law Judges sent the Notice and Order to Oceanic Bridge at East Gale Ave., #233, City of Industry, CA 91748, by UPS and regular mail. UPS records indicate that the Notice and Order was delivered on April 28, 2014, and that a person named Lisa signed for the package. The regular mail has not been returned. The Notice and Order required a response by May 13, 2014. *Id.* Oceanic Bridge did not respond to the Notice and Order.

**C. BOE's Motion for Decision on Default.**

Because Oceanic Bridge had not responded to either the Order of Investigation and Hearing or the Order to Show Cause, on June 13, 2014, BOE served and filed a motion for decision on default accompanied by affidavits and shipping documents it contends support the allegations in the Order of Investigation and Hearing. As of the date of this Initial Decision, Oceanic Bridge has not answered or otherwise responded to the Order of Investigation and Hearing, the Order to Show Cause, or the motion for default.

**D. Orders to Supplement the Record.**

To ensure that this decision is based on "reliable, probative, and substantial evidence," 5 U.S.C. § 556(d), the undersigned issued three orders for BOE to supplement the record. The first

order to supplement sought Oceanic Bridge's Application for a License as an Ocean Transportation Intermediary, the Oceanic Bridge certificate of dissolution as a corporation, copies of the Maersk Line/Oceanic Bridge and Maersk Line/Dalian Haiqiao service contracts, and the settlement agreement between the Commission and OBI Shipping, Inc., a licensed NVOCC located at the same address as Oceanic Bridge and referenced in BOE's motion for decision on default. It also asked if BOE knew the relationship between Ray Tang and Mr. Tong Tang. *Oceanic Bridge – Possible Violations*, FMC No. 14-02 (ALJ July 2, 2014) (Order to Supplement the Record). The second order asked BOE to file copies of the articles of incorporation of Oceanic Bridge International, Inc., and OBI Shipping, Inc., and asked whether the two corporations have overlapping officers, directors, and employees. *Oceanic Bridge – Possible Violations*, FMC No. 14-02 (ALJ July 11, 2014) (Second Order to Supplement the Record). BOE supplied the requested documents and responded to the questions.<sup>4</sup>

The third order asked for clarification of an exhibit summarizing information from the shipping documents and the services contracts submitted with its motion by BOE as a summary of the evidence establishing the rate that Oceanic Bridge should have paid for each shipment under its own service contracts and the money it saved by using service contracts to which it was not a party or named affiliate of a party entitled to access the contract. (BOE Motion for Default, Verified Statement of Michael F. Carley Attachment A.) It appeared that an incorrect date may have been used to determine the rate Oceanic Bridge should have paid pursuant to its own service contracts. *Oceanic Bridge – Possible Violations*, FMC No. 14-02 (ALJ Sept. 24, 2014) (Third Order to Supplement the Record). On October 17, 2014, BOE submitted a supplemental statement and attachment based on the correct dates. (BOE's Response to Third Order to Supplement.)

## II. CONTROLLING AUTHORITY.

### A. Statutory Framework.

The Commission issued its Order of Investigation and Hearing pursuant to section 11(c) of the Act: "The . . . Commission, on complaint or its own motion, may investigate any conduct or agreement that the Commission believes may be in violation of this part." 46 U.S.C. § 41302(a). The Order alleges that Oceanic Bridge violated section 10(a)(1) of the Act.

A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement,

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<sup>4</sup> The first order states that "[t]he undersigned does not have access to service contracts on SERVCON." *Oceanic Bridge – Possible Violations*, FMC No. 14-02 (ALJ July 2, 2014) (Order to Supplement the Record). In its response, BOE states that administrative law judges do have access to SERVCON. (BOE Response to Order to Supplement the Record at 4 n.3.) Nevertheless, to ensure that an administrative law judge reviews the contract or other document on which BOE relies, submission of hard copy when requested seems the better policy and ensures a clear record for review.

or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.

46 U.S.C. § 41102(a).

The Act defines and regulates a number of different types of entities that are involved in the international shipment of cargo by water, including two kinds of ocean transportation intermediaries. “The term ‘ocean transportation intermediary’ means an ocean freight forwarder or a non-vessel-operating common carrier.” 46 U.S.C. § 40102(19). “The term ‘non-vessel-operating common carrier’ means a common carrier that – (A) does not operate the vessels by which the ocean transportation is provided; and (B) is a shipper in its relationship with an ocean common carrier.” 46 U.S.C. § 40102(16). To be an NVOCC, the intermediary must meet the Act’s definition of “common carrier.”

The term “common carrier” – (A) means a person that – (i) holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation; (ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and (iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

46 U.S.C. § 40102(6).

The term “shipper” means – (A) a cargo owner; (B) the person for whose account the ocean transportation of cargo is provided; (C) the person to whom delivery is to be made; (D) a shippers’ association; or (E) a non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

46 U.S.C. § 40102(22). The Act provides that a common carrier may enter into service contracts with shippers, including NVOCCs. “An individual ocean common carrier or an agreement between or among ocean common carriers may enter into a service contract with one or more shippers subject to the requirements of this part.” 46 U.S.C. § 40502(a).

The shipper contract party shall sign and certify on the signature page of the service contract its shipper status (e.g., owner of the cargo, shippers’ association, NVOCC, or specified other designation), and the status of every affiliate of such contract party or member of a shippers’ association entitled to receive service under the contract.

46 C.F.R. § 530.6(a). Service contracts must be filed confidentially with the Commission. 46 U.S.C. § 40502(b)(1). A person violates section 10(a)(1) by unlawfully accessing a service contract to which it is not a signatory or a named affiliate. *Green Master Int’l Freight Services Ltd.*

– Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984, 29 S.R.R. 1303, 1313 (FMC 2003).

The Act provides that the Commission may assess a civil penalty against a person found in violation of its provisions.

A person that violates this part or a regulation or order of the . . . Commission issued under this part is liable to the United States Government for a civil penalty. Unless otherwise provided in this part, the amount of the penalty may not exceed [\$8000] for each violation or, if the violation was willfully and knowingly committed, [\$40,000] for each violation.

46 U.S.C. § 41107(a).<sup>5</sup>

(a) . . . [T]he . . . Commission may, after notice and opportunity for a hearing, assess a civil penalty provided for in this part. The Commission may compromise, modify, or remit, with or without conditions, a civil penalty.

(b) Factors in determining amount. – In determining the amount of a civil penalty, the Commission shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require.

46 U.S.C. § 41109(a).

#### **B. Evidence and Burden of Persuasion.**

Under the Administrative Procedure Act, an administrative law judge may not issue an order “except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.” 5 U.S.C. § 556(d); *see also Steadman v. SEC*, 450 U.S. 91, 102 (1981). BOE submitted shipping documents for forty-nine Oceanic Bridge shipments that Oceanic Bridge produced during BOE’s investigation of its activities. Oceanic Bridge has not appeared or objected to admission of these documents. Furthermore, from all appearance, the documents are regularly kept business records of Oceanic Bridge’s shipping activities. All exhibits filed with BOE’s motion for decision on default and the supplemental exhibits filed at the request of the undersigned are hereby admitted as evidence.

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<sup>5</sup> The Act originally provided for maximums of \$5000 and \$25,000. Before the shipments at issue took place, the maximums had been increased to \$8000 and \$40,000. 74 Fed. Reg. 38114, 38115-38116 (July 31, 2009); 76 Fed. Reg. 74720, 74721 (Dec. 1, 2011) (codified at 46 C.F.R. § 506.4(d) (Table) (2013)).

This initial decision addresses only issues of fact and law material to the determination of the allegations of the complaint or the defenses thereto. Administrative adjudicators are “not required to make subordinate findings on every collateral contention advanced, but only upon those issues of fact, law, or discretion which are ‘material.’” *Minneapolis & St. Louis Ry. Co. v. United States*, 361 U.S. 173, 193-94 (1959); *In re Amrep Corp.*, 102 F.T.C. 1362, 1670 (1983). To the extent findings of fact may be deemed conclusions of law, they should also be considered conclusions of law. Similarly, to the extent conclusions of law may be deemed findings of fact, they should also be considered findings of fact.

A party alleging a violation of the Shipping Act – BOE in this proceeding – “has the initial burden of proof to establish the[] violation[]. The applicable standard of proof is one of substantial evidence, an amount of information that would persuade a reasonable person that the necessary premise is more likely to be true than to be not true.” *AHL Shipping Company v. Kinder Morgan Liquids Terminals, LLC*, FMC No. 04-05, 2005 WL 1596715, at \*3 (ALJ June 13, 2005). See 5 U.S.C. § 556(d) (“Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.”); 46 C.F.R. § 502.155. “[A]s of 1946 the ordinary meaning of burden of proof [in section 556(d)] was burden of persuasion, and we understand the APA’s unadorned reference to ‘burden of proof’ to refer to the burden of persuasion.” *Director, Office of Workers’ Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). The party with the burden of persuasion must prove its case by a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. at 102. “[W]hen the evidence is evenly balanced, the [party with the burden of persuasion] must lose.” *Greenwich Collieries*, 512 U.S. at 281. It is appropriate to draw inferences from certain facts when direct evidence is not available, and circumstantial evidence alone may even be sufficient; however, such findings may not be drawn from mere speculation. *Waterman Steamship Corp. v. General Foundries, Inc.*, 26 S.R.R. 1173, 1180 (ALJ 1993), adopted in relevant part, 26 S.R.R. 1424 (1994).

Pursuant to Commission Rules:

Failure of a respondent to file an answer to an Order of Investigation and Hearing within the time provided will be deemed to constitute a waiver of the respondent’s right to appear and contest the allegations in the Order of Investigation and Hearing and to authorize the presiding officer to enter a decision on default as provided for in 46 CFR 502.65. Well pleaded factual allegations in the Order of Investigation and Hearing not answered or addressed will be deemed to be admitted.

46 C.F.R. § 502.63(c)(4). When a party serves requests for admissions pursuant to Commission Rule 207, “[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney.” 46 C.F.R. § 502.207(a)(3).

### III. FINDINGS OF FACT.

The findings of fact are based on the exhibits (the declarations by Commission personnel and the Oceanic Bridge shipping documents) filed with BOE's motion for decision on default, the well-pleaded allegations in the Notice of Investigation and Hearing, the Requests for Admission to which Oceanic Bridge failed to respond, and the supplemental information filed by BOE at the request of the undersigned.

1. From May 1999 through at least March 26, 2013, Oceanic Bridge International, Inc. (Oceanic Bridge) was licensed by the Federal Maritime Commission to operate as an ocean transportation intermediary (OTI), providing service as a non-vessel-operating common carrier (NVOCC) (FMC Org. No. 013355). (Order of Investigation and Hearing (OIH) ¶ 1; Verified Statement of Nash D. Asandas (VS Asandas) ¶ 4.)
2. Tong Tang was Oceanic Bridge's sole owner, Secretary, and Qualifying Individual. (VS Asandas ¶ 6; Oceanic Bridge Form FMC-18.)<sup>6</sup>
3. The offices of Oceanic Bridge were located at 18725 East Gale Ave., Suite 233, City of Industry, CA 91748. (OIH ¶ 2; BOE Resp. to Ord. to Supp. Record, App. at 2; BOE App. at 10 (Oceanic Bridge bill of lading).)
4. Records of the California Secretary of State identify Tong Tang, 18725 East Gale Ave., Suite 233, City of Industry, CA 91748, as Oceanic Bridge's agent for service of process. (BOE Resp. to Ord. to Supp. Record, App. at 2.)
5. From May 1999 through at least April 25, 2013, Oceanic Bridge held itself out as an NVOCC pursuant to a tariff published by Distribution-Publications, Inc. (OIH ¶ 3.)
6. Oceanic Bridge maintained an NVOCC bond (No. 50511) in the amount of \$75,000 with Great American Alliance Insurance Company (Great American) located in Elk Grove Village, IL. (OIH ¶ 4; VS Asandas ¶ 10.)
7. Oceanic Bridge was dissolved as a California corporation on December 24, 2012. (OIH ¶ 5; BOE Response to Ord. to Supp. Record, App. 2.)
8. Oceanic Bridge surrendered its OTI license on March 26, 2013. (OIH ¶ 6; VS Asandas ¶ 8.)

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<sup>6</sup> I take official notice of all publically available Commission records cited in these findings of fact. 46 C.F.R. § 502.226

9. Oceanic Bridge's NVOCC bond was cancelled effective September 21, 2013. (OIH ¶ 7.)<sup>7</sup>
10. Oceanic Bridge maintained a network of agents in the People's Republic of China (PRC) operating under the name Dalian Oceanic Bridge International Forwarding Co. Ltd. (OIH ¶ 8.)
11. Oceanic Bridge (as shipper) and Maersk Line (as common carrier) were parties to Maersk Line service contracts 429377 and 518197. (OIH ¶ 18; Maersk Line service contracts 429377 and 518197.)
12. Maersk Line service contracts 429377 (effective date May 4, 2010, in effect as amended until April 30, 2011) and 518197 (effective date May 5, 2011, in effect as amended until April 30, 2012) were in effect between December 8, 2010, and May 2011. (OIH ¶ 19; Maersk Line service contracts 429377 and 518197.)
13. In Maersk Line service contracts 429377 and 518197, Oceanic Bridge certified its shipper's status as an NVOCC. (OIH ¶ 18; Maersk Line service contracts 429377 and 518197.)
14. Dalian Haiqiao Enterprises Co. Ltd. (Dalian Haiqiao) (as shipper) and Maersk Line (as common carrier) were parties to Maersk Line service contracts 460860 (commencement date October 26, 2010, in effect as amended until April 30, 2011) and 518178 (commencement date May 4, 2011, in effect as amended until April 30, 2012). (VS Asandas ¶ 35; Maersk Line service contracts 460860 and 518178.)
15. In Maersk Line service contracts 460860 and 518178, Dalian Haiqiao certified its shipper's status as owner of cargo. (VS Asandas ¶ 35; Maersk Line service contracts 460860 and 518178.)
16. Dalian Haiqiao was the only shipper party identified in Maersk Line service contracts 460860 and 518178. (OIH ¶ 10; Maersk Line service contracts 460860 and 518178.)
17. When it entered into Maersk Line service contracts 460860 and 518178, Dalian Hiaqiao represented to Maersk Line that it would be the owner of the cargo shipped pursuant to the service contracts. (OIH ¶ 11; Maersk Line service contracts 460860 and 518178.)
18. Oceanic Bridge was not a signatory of or named in any capacity in Maersk Line service contracts 460860 and 518178. (OIH ¶ 12; VS Asandas ¶ 36; Maersk Line service contracts 460860 and 518178.)

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<sup>7</sup> The Order of Investigation and Hearing alleges that Great American cancelled the bond. (OIH ¶ 7.) The Asandas statement avers that Respondent cancelled the bond. (VS Asandas ¶ 11.) They agree on the date. For purposes of this decision, the party that initiated the cancellation is not material.

19. Maersk Line service contracts 429377, 460860, 518178, and 518197 established rates, charges, and surcharges (“freight”) for containers of several sizes from various locations in China, Hong Kong, and Taiwan to various locations in the United States. (Maersk Line service contracts 429377, 460860, 518178, and 518197.)
20. The contracting parties agreed to periodic amendments of Maersk Line service contracts 429377, 460860, 518178, and 518197. (Maersk Line service contracts 429377, 460860, 518178, and 518197.)
21. Maersk Line service contracts 429377, 460860, 518178, and 518197 provide that “[t]he invoice [for a shipment] will be calculated based on the gate-in date of the last container of shipment.” (Maersk Line service contracts 429377, 460860, 518178, and 518197.)
22. In 2011, the Commission conducted an audit of Oceanic Bridge’s shipping activities that indicated Oceanic Bridge may have accessed one or more service contracts to which it was not a party. (VS Asandas ¶ 12.)
23. At the request of the Bureau of Enforcement, Oceanic Bridge produced shipping documents for forty-nine Oceanic Bridge shipments that BOE submitted as part of the record of this proceeding. (VS Asandas ¶¶ 13-17; BOE App. at 4-369.)<sup>8</sup>
24. On forty-five shipments between December 8, 2010, and May 7, 2011, identified in Supplemental Attachment A of the Supplemental Verified Statement of Michael F. Carley (Supp. VS Carley) attached to BOE’s Response to Third Order to Supplement, Oceanic Bridge obtained transportation for property from Maersk Line from China to the United States by accessing service contract 460860 between Maersk Line and Dalian Haiqiao. (Supp. VS Carley Supp. Attachment A; BOE App. at 4-341.)
25. Each of the forty-five shipments involved transportation by water of cargo between the United States and a foreign country for compensation. (BOE App. at 4-341.)
26. On each of the forty-five shipments, Oceanic Bridge issued a bill of lading identifying the shipper as a person other than Dalian Haiqiao. (BOE App. at 4-341.)
27. The forty-five Oceanic Bridge bills of lading identify “Ms. Cindy” as the contact person for delivery. (See, e.g., BOE App. at 10 (Oceanic Bridge Bill of Lading OBIGNBMA82502041.)

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<sup>8</sup> Oceanic Bridge produced records for fifty shipments, but BOE apparently did not submit shipping records for one shipment.

28. OBI Shipping, Inc. (OBI Shipping), a California corporation incorporated July 19, 2007, and located at the same address and telephone number as Oceanic Bridge, is licensed by the Commission to operate as an OTI, providing service as an NVOCC (FMC Org. No. 021117). (VS Asandas ¶¶ 26-27; Articles of Incorporation of OBI Shipping attached to BOE's Response to Second Order to Supplement.)
29. On each of the forty-five shipments, a person named Cindy prepared and issued an OBI Shipping arrival notice to the person identified as the shipper on the Oceanic Bridge bill of lading. (BOE App. at 4-341.)
30. On each of the forty-five shipments, Maersk Line issued a non-negotiable waybill<sup>9</sup> identifying Dalian Haiqiao as the shipper, Oceanic Bridge as the consignee, Oceanic Bridge as the notify party, and 460860 as the service contract. (BOE App. at 4-341.)
31. Dalian Haiqiao did not have an interest in any of the forty-five shipments. (OIH ¶ 15.)
32. On each of the forty-five shipments, Maersk Line issued an arrival notice to Oceanic Bridge stating the freight rate set forth in Dalian Haiqiao service contract 460860. (Supp. VS Carley ¶¶ 2-10 and Supp. Attachment A; BOE App. at 4-341.)
33. On each of the forty-five shipments, OBI Shipping issued a check paying Maersk for the transportation. (BOE App. at 4-341.)
34. On the forty-four shipments between December 8, 2010, and April 30, 2011, the rate established by Oceanic Bridge service contract 429377 was higher than the Dalian Haiqiao rate that Maersk charged Oceanic Bridge on the shipments. (Supp. VS Carley Supp. Attachment A.)
35. The May 7, 2011, shipment (Exhibit No. 46, BOE App. at 335-341) occurred after the effective date of Maersk-Oceanic Bridge service contract 518197. (BOE App. at 335-341.)
36. On the May 7, 2011, shipment, the rate established by Oceanic Bridge service contract 518197 was higher than the Dalian Haiqiao rate that Maersk charged Oceanic Bridge on the shipment. (Supp. VS Carley Supp. Attachment A.)
37. On four shipments identified in Attachment A of the Carley Statement, Oceanic Bridge obtained transportation for property from Maersk Line from China to the United States by accessing service contract 518178 between Maersk Line and Dalian Haiqiao. (BOE App. at 342-369.)

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<sup>9</sup> The Asandas statement (*e.g.*, VS Asandas ¶ 17), supplemental Carley statement (Supp. VS Carley ¶ 10), and BOE's motion (*e.g.*, motion at 6) refer to these documents as "master bills of lading." The documents themselves are entitled "non-negotiable waybill."

38. Each of the four shipments involved transportation by water of cargo between the United States and a foreign country for compensation over which the Commission has jurisdiction. (BOE App. at 342-369.)
39. On each of the four shipments, Oceanic Bridge issued a bill of lading identifying the shipper as a person other than Dalian Haiqiao. (BOE App. at 342-369.)
40. The four Oceanic Bridge bills of lading identify “Ms. Cindy” as the contact person for delivery. (*See, e.g.*, BOE App. at 369 (Oceanic Bridge Bill of Lading OBIGNBMA62164647).)
41. On each of the four shipments, a person named Cindy prepared and issued an OBI Shipping arrival notice to the person identified as the shipper on the Oceanic Bridge bill of lading. (BOE App. at 342-369.)
42. On each of the four shipments, Maersk Line issued a non-negotiable waybill identifying Dalian Haiqiao as the shipper, Oceanic Bridge as the consignee, Oceanic Bridge as the notify party, and 518178 as the service contract. (BOE App. at 342-369.)
43. Dalian Haiqiao did not have an interest in any of the four shipments. (OIH ¶ 15.)
44. On each of the four shipments, Maersk Line issued an arrival notice to Oceanic Bridge stating the freight rate set forth in Dalian Haiqiao service contract 518178. (Supp. VS Carley Supp. Attachment A; BOE App. at 342-369.)
45. On each of the four shipments, the rate established by Oceanic Bridge service contract 518197 was higher than the Dalian Haiqiao rate that Maersk charged Oceanic Bridge on the shipments. (Supp. VS Carley Supp. Attachment A.)
46. On each of the four shipments, OBI Shipping issued a check paying Maersk for the transportation. (BOE App. at 342-369.)
47. On February 21, 2014, the Commission commenced this proceeding by issuing an Order of Investigation and Hearing against respondent Oceanic Bridge International, Inc. *Oceanic Bridge International, Inc. – Possible Violations of Section 10(a)(1) of the Shipping Act of 1984*, FMC No. 14-02 (FMC Feb. 21, 2014) (Order of Investigation and Hearing).
48. On February 21, 2014, the Secretary sent the Order of Investigation and Hearing by United Parcel Service (UPS) to Tong Tang, 18725 East Gale Ave., #233, City of Industry, CA 91748. (Official Notice of Commission Records.)

49. On February 24, 2014, at 10:04 A.M., UPS delivered the Order of Investigation and Hearing to 18725 East Gale Ave., #233, and a person named Cindy signed for the package. (Official Notice of Commission Records.)
50. On February 26, 2014, a person named Ray Tang, an employee of OBI Shipping, contacted the Secretary by email stating that OBI Shipping had received the Order of Investigation and Hearing, that Oceanic Bridge had been dissolved in 2012, and that the former stockholders of Oceanic Bridge had designated Ray Tang “as their temporary agent.” (Email dated Feb. 26, 2014, from Ray Tang, “agent of Oceanic Bridge International Inc.,” to the Office of the Secretary attached to BOE’s Response to Second Order to Supplement.)
51. Ray Tang asked “if a compromise could be reached to avoid this Order of Investigation and Hearing.” (Email dated Feb. 26, 2014, from Ray Tang, “agent of Oceanic Bridge International Inc.,” to the Office of the Secretary attached to BOE’s Response to Second Order to Supplement.)
52. During the period from issuance of the Order of Investigation and Hearing through March 27, 2014, counsel for BOE communicated with a representative of Oceanic Bridge about the proceeding in an attempt to negotiate a settlement. (BOE’s Statement Regarding Joint Status Report at 2.)
53. As of the date of this decision, Oceanic Bridge has not filed an answer or otherwise responded to the Order of Investigation and Hearing. (Official Notice of Commission Records.)
54. On April 22, 2014, a Notice of Default and Order to Show Cause was issued. The Notice and Order required Oceanic Bridge: (1) to file an answer to the Order of Investigation and Hearing; and (2) to show cause why a decision on default should not be entered against it. The Notice and Order required a response by May 13, 2014. *Oceanic Bridge – Possible Violations*, FMC No. 14-02 (ALJ Apr. 22, 2014) (Notice of Default and Order to Show Cause). (Official Notice of Commission Records.)
55. The Office of Administrative Law Judges sent the Notice of Default and Order to Show Cause to Oceanic Bridge by UPS and regular mail to Oceanic Bridge at East Gale Ave., #233, City of Industry, CA 91748. (Official Notice of Commission Records.)
56. UPS records indicate that the Notice of Default and Order to Show Cause was delivered on April 28, 2014, and that a person named Lisa signed for the package. (Official Notice of Commission Records.)
57. The Notice of Default and Order to Show Cause sent to Oceanic Bridge by regular mail has not been returned. (Official Notice of Commission Records.)

58. As of the date of this decision, Oceanic Bridge has not answered or otherwise responded to the order to show cause. (Official Notice of Commission Records.)
59. On June 13, 2014, the Bureau of Enforcement served its Motion for Decision on Default on Oceanic Bridge. (BOE Motion for Default – Certificate of Service.)
60. As of the date of this decision, Oceanic Bridge has not responded to the Motion for Decision on Default. (Official Notice of Commission Records.)
61. In an enforcement action in 1999, the Commission alleged that Oceanic Bridge misdescribed commodities on shipments transported under a service contract. The matter was resolved through the Commission’s informal compromise procedures in which Oceanic Bridge executed a compromise agreement and paid a civil penalty. (VS Asandas ¶ 47.)

#### **IV. OCEANIC BRIDGE IS IN DEFAULT.**

##### **A. Oceanic Bridge Received Notice of this Proceeding.**

The Administrative Procedure Act (APA) requires the Commission to provide notice to a person interested in the subject of a hearing.

(b) Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature of the hearing; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. . . . [A]gencies may by rule require responsive pleading. . . .

(c) 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. The Commission provides notice of an enforcement proceeding through an Order of Investigation and Hearing. The Commission has promulgated a rule that requires a respondent to file an answer to an Order of Investigation and Hearing. 46 C.F.R. § 502.63(c).

The offices of Oceanic Bridge were located at 18725 East Gale Ave., Suite 233, City of Industry, CA 91748. FF 3.<sup>10</sup> I take official notice of Commission records, 46 C.F.R. § 502.226, that on February 21, 2014, the Secretary sent the Order of Investigation and Hearing by United Parcel Service (UPS) to Tong Tang, 18725 East Gale Ave., #233, City of Industry, CA 91748. FF 46. On February 24, 2014, at 10:04 A.M., UPS delivered the Order to 18725 East Gale Ave., #233, and a person named Cindy signed for the package. FF 47. I note that on its bills of lading, Oceanic Bridge identifies “Cindy” as the person to contact for delivery, FF 37, and that “Cindy” was the Oceanic

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<sup>10</sup> FF followed by a number refers to a finding of fact in Section III above.

Bridge contact person identified on the Oceanic Bridge bills of lading, FF 27 and FF 40, and that “Cindy” prepared the arrival notices. FF 29 and FF 41.

On February 26, 2014, a person named Ray Tang, an employee of OBI Shipping, contacted the Secretary by email stating that OBI Shipping had received the Order of Investigation and Hearing, that Oceanic Bridge had been dissolved in 2012, and that the former stockholders of Oceanic Bridge had left Ray Tang “as their temporary agent.” FF 48. Ray Tang asked “if a compromise could be reached to avoid this Order of Investigation and Hearing.” FF 49. During the period from issuance of the Order of Investigation and Hearing through March 27, 2014, counsel for the Bureau of Enforcement communicated several times with a representative of Oceanic Bridge about the proceeding in an attempt to negotiate a settlement. FF 50. Oceanic Bridge did not answer or otherwise respond to the Order of Investigation and Hearing. FF 51.

On April 22, 2014, a Notice of Default and Order to Show Cause was issued. FF 52. The Notice and Order required Oceanic Bridge: (1) To file an answer to the Order of Investigation and Hearing; and (2) to show cause why a decision on default should not be entered against it. The Notice and Order required a response by May 13, 2014. *Oceanic Bridge – Possible Violations*, FMC No. 14-02 (ALJ Apr. 22, 2014) (Notice of Default and Order to Show Cause). The Office of Administrative Law Judges sent the Notice of Default and Order to Show Cause to Oceanic Bridge by UPS and regular mail to Oceanic Bridge at East Gale Ave., #233, City of Industry, CA 91748. FF 53. UPS records indicate that it was delivered on April 28, 2014, and that a person named Lisa signed for the package. FF 54. The Notice of Default and Order to Show Cause sent to Oceanic Bridge by regular mail has not been returned. FF 55. Oceanic Bridge did not respond to the order to show cause. FF 56.

On June 13, 2014, BOE filed a motion for decision on default accompanied by affidavits and shipping documents it contends support the allegations in the Notice and Order. FF 57. *See* 46 C.F.R. § 502.63(c)(4) (authorizing decision for default when respondent fails to respond to an order of investigation and hearing). BOE served the motion on Oceanic Bridge at East Gale Ave., #233, City of Industry, CA 91748, by regular mail. (BOE Motion for Default – Certificate of Service.) Commission rules required Oceanic Bridge to respond to the motion on or before June 30, 2014. *See* 46 C.F.R. § 502.69(g) (motion for initial decision on default is dispositive motion); 46 C.F.R. § 502.70(b) (response to dispositive motion must be filed within 15 days of service of motion). Oceanic Bridge has not filed a response to the motion. FF 58.

The Supreme Court has stated “that due process requires the government to provide ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Jones v. Flowers*, 547 U.S. 220, 226 (2006), *quoting Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

There is a presumption that, in the absence of evidence to the contrary, a notice provided by a government agency is deemed to have been placed in the mail on the date shown on the notice and received within a reasonable time thereafter. *See Me.*

*Med. Ctr. v. United States*, 675 F.3d 110, 114 (1st Cir. 2012); *Sherlock v. Montefiore Med. Ctr.*, 84 F.3d 522, 526 (2d Cir. 1996).

*Loubriel v. Fondo del Seguro del Estado*, 694 F.3d 139, 143 (1st Cir. 2012).

The Order of Investigation and Hearing, the notice of default and order to show cause, and BOE's motion for default informed Oceanic Bridge of the time, place, and nature of the hearing, the legal authority and jurisdiction under which the hearing is to be held, and the matters of fact and law asserted. 5 U.S.C. § 554(b). The Commission has given Oceanic Bridge opportunity for the submission and consideration of facts and arguments. 5 U.S.C. § 554(b). Based on Commission records showing delivery and the presumption of delivery articulated in *Loubriel*, and the conversations about the proceeding between a representative of Oceanic Bridge and an attorney for BOE, I find that Oceanic Bridge received the Order of Investigation and Hearing, the Notice of Default and Order to Show Cause, and BOE's motion for decision on default – each of which provided notice that conveyed all of the salient information reasonably calculated, under all the circumstances, to apprise Oceanic Bridge of the pendency of this proceeding and afford it an opportunity to protect its interests. “The Constitution does not require that an effort to give notice succeed. *See, e.g., Dusenbery v. United States*, 534 U.S. 161, 122 S. Ct. 694, 151 L. Ed. 2d 597 (2002).” *Ho v. Donovan*, 569 F. 3d 677, 680 (7th Cir. 2009).

**B. Oceanic Bridge Has Defaulted.**

Despite having received notice of this proceeding, Oceanic Bridge has failed to answer or otherwise respond and has failed to contest the allegations. Under these circumstances, it is customary for the Commission as well as courts to find that a defaulting respondent has admitted the well-pleaded allegations. *Bermuda Container Line Ltd. v. SHG Int'l Sales, Inc., FX Coughlin Co., and Clark Building Systems, Inc.*, 1998 WL 309055 (ALJ Mar. 24, 1998); *Hugh Symington v. Euro Car Transport, Inc.*, 26 S.R.R. 871, 872 (ALJ 1993). *See also* 46 C.F.R. § 502.62(b)(6)(ii) (effective date November 5, 2012) (“Well pleaded factual allegations in the complaint not answered or addressed will be deemed to be admitted.”). I find that Oceanic Bridge is in default.

**V. CONCLUSIONS OF LAW.**

**A. Oceanic Bridge Violated Section 10(a)(1) of the Act by Knowingly and Willfully Obtaining Transportation for Property at Less Than the Rates and Charges Otherwise Applicable.**

Section 10(a)(1) is similar to section 16 of the Shipping Act, 1916, the predecessor to the 1984 Act. Section 16 stated:

That it shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing,

false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

46 U.S.C. § 815 (1982). In *Capitol Transportation, Inc. v. United States*, the First Circuit reviewed the Commission's imposition of a reparation award based on a violation of section 16. *Capitol Transportation, Inc. v. United States*, 612 F.2d 1312 (1st Cir. 1979). An organization called MSC billed Capitol for demurrage charges under commercial bills of lading naming Capitol as consignee, but Capitol did not pay. MSC filed a complaint with the Commission seeking a reparation award. The Commission found that Capitol operated as an NVOCC and as consignee on the shipments and was liable for the demurrage charges. The Commission affirmed the administrative law judge's holding that "by knowingly and willfully refusing to pay demurrage owing under published tariffs, [Capitol] in effect obtained transportation by water at less than the applicable rates and thus violated section 16 of the Shipping Act," *id.*, 612 F.2d at 1317, and the reparation award requiring Capitol to pay the demurrage owed plus interest. *Id.*

Capitol filed a petition for review of the Commission's decision. The court denied Capitol's petition for review. Regarding section 16, the court stated that "a carrier's mere stubborn but good faith refusal to pay a disputed rate or charge" does not constitute an "unjust or unfair device or means" within the meaning of section 16. The court agreed with the Commission's finding that the "requisite element of fraud or concealment was established in this case by Capitol's 'unexplained and apparently unjustified avoidance of any payment of the amounts found due and owing.'" *Id.* at 1323.

The Commission could properly find on this record that Capitol's refusal to pay had never been based upon a good faith legal defense, but simply reflected a calculated judgment to fight MSC to the end, forcing it to pay in blood, sweat and treasure for every penny eventually collected. On the merits of the demurrage claim, Capitol failed to present a legal defense of any substance, and belatedly raised a variety of ever-changing contentions after the time for discovery or hearing was over. Those facts, coupled with earlier correspondence indicating an adamant and legally unexplained resistance to the notion of MSC's centralized demurrage billing procedure entitled the Commission to conclude that Capitol was not only knowing and wilfull in its refusal to pay, but that its policies, conducted as they were in bad faith, were tantamount to an unjust or unfair means of obtaining transportation by water at lower than applicable rates. Although it would not be proper to extend this rationale to cases involving refusal to pay based on honest differences, we think the conduct reflected in the present record was sufficiently egregious to support the Commission's finding that the requisite element of fraud or concealment was here established. . . . A calculated effort in bad faith to avoid the payment of demurrage legitimately owing would, if successful, allow shippers and consignees to accomplish what Section 16 was intended to prevent the receipt of carrier service at less than applicable rates and at less than rates charged to competitors. Thus while this case

undoubtedly nears the outer limits of Section 16, we uphold the Commission's finding of violation.

*Id.* at 1323-1324. As the Commission stated, “[t]he D.C. Circuit, in referring to section 16, initial paragraph, of the 1916 Act, the predecessor of section 10(a)(1), recognized that ‘Congress was concerned both with protection of carriers against unscrupulous shippers, and of honest shippers against unscrupulous competitors, acting independently, or in collusion with a carrier.’” *Rose Int'l, Inc. v. Overseas Moving Network Int'l Ltd.*, 29 S.R.R. 119, 164 (FMC 2001), quoting *Hohenberg Brothers Co. v. Federal Maritime Comm'n*, 316 F.2d 381, 384 (D.C. Cir. 1963). “[A] showing of fraud or concealment may be based on fraud either to the underlying common carrier or to competing shippers.” *Rose Int'l*, 29 S.R.R. at 173, citing *Hohenberg Brothers*, 316 F.2d at 384; *China Ocean Shipping Co. v. DMV Ridgeview, Inc.*, 26 S.R.R. 50, 53, 55 (ALJ 1991); *Pacific Far East Lines – Alleged Rebates to Foremost Dairies, Inc., Connell Brothers Co., Ltd., & Advance Mill Supply Corp.*, 10 S.R.R. 1, 6 (FMC 1968), *aff'd sub nom Pacific Far East Line, Inc. v. Federal Maritime Comm'n*, 410 F.2d 257 (D.C. Cir. 1969).

In 1992, the Commission published a proposed interpretive rule intended to clarify jurisdiction in proceedings under section 10(a)(1) of the 1984 Act (the successor to section 16 of the 1916 Act). See *Unpaid Freight Charges*, FMC No. 92-46, 58 Fed. Reg. 7190 (Feb. 5, 1993), 26 S.R.R. 735 (FMC 1993) (Final Interpretive Rule). The Commission promulgated a final rule based in part on the *Capitol Transportation* decision expressing its conclusion that use of an unjust or unfair device or means is an essential element of a section 10(a)(1) violation.

Section 10(a)(1) of the Shipping Act . . . states that it is unlawful for any person to obtain or attempt to obtain transportation for property at less than the properly applicable rates, by any “unjust or unfair device or means.” An essential element of the offense is use of an “unjust or unfair device or means.” In the absence of evidence of bad faith or deceit, the . . . Commission will not infer an “unjust or unfair device or means” from the failure of a shipper to pay ocean freight. An “unjust or unfair device or means” could be inferred where a shipper, in bad faith, induced the carrier to relinquish its possessory lien on the cargo and to transport the cargo without prepayment by the shipper of the applicable freight charges.

46 C.F.R. § 545.2.

The issue in this proceeding is whether there is evidence of bad faith or deceit that would support a finding that Oceanic Bridge used an unjust or unfair device or means to obtain transportation at less than the applicable rates. I conclude that evidence in the record establishes by a preponderance of the evidence that Oceanic Bridge engaged in bad faith or deceit within the meaning of section 10(a)(1) to obtain transportation at less than the applicable rates. On each of the forty-nine shipments at issue, Oceanic Bridge operated as an NVOCC when it issued a bill of lading assuming the responsibility for transportation of cargo by water between a foreign port and the United States. On each shipment, it was a shipper in relation to Maersk Line within the meaning of

the Act. 46 U.S.C. § 40102(22)(E). Oceanic Bridge had its own service contracts with Maersk that required a freight rate as much as \$530 higher than the rate Oceanic Bridge paid pursuant to the Dalian Haiqiao contracts. FF 11-46; Supp. VS Carley Supp. Attachment A. Oceanic Bridge knew from its experience as an NVOCC and negotiating its own service contracts that all affiliates of a shipper on a service contract that are entitled to receive service under the contract must be identified. I find that Oceanic Bridge knew that it was not a party to the Maersk-Dalian Haiqiao service contracts, but despite that knowledge, used that contract on which Oceanic Bridge was the shipper. Therefore, I conclude that on each of the forty-nine shipments, Oceanic Bridge knowingly and willfully, by means of an unjust or unfair device or means, obtained transportation by water for property at less than the rates or charges which would otherwise be applicable in violation of section 10(a)(1) of the Shipping Act.

**B. Oceanic Bridge is Liable to the United States for a Civil Penalty.**

**1. Controlling authority.**

Section 13(a) of the Shipping Act provides for civil penalties for violations of the Act.

A person that violates this part or a regulation or order of the . . . Commission issued under this part is liable to the United States Government for a civil penalty. Unless otherwise provided in this part, the amount of the penalty may not exceed [\$8,000] for each violation or, if the violation was willfully and knowingly committed, [\$40,000] for each violation.

46 U.S.C. § 41107(a). The Act originally provided for maximums of \$5,000 and \$25,000. In 2009, the Commission increased these amounts to \$8,000 and \$40,000 for violations committed after July 31, 2009. *See* 74 Fed. Reg. 38114, 38115 (July 31, 2009); 76 Fed. Reg. 74720, 74721 (Dec. 1, 2011) (codified at 46 C.F.R. § 506.4(d) (Table) (2013); 46 C.F.R. § 506.5). Oceanic Bridge committed the violations after July 31, 2009.

Section 13(c) of the Act provides that in “determining the amount of a civil penalty, the Commission shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require.” 46 U.S.C. § 41109(b). These factors have been codified in the regulations which state:

In determining the amount of any penalties assessed, the Commission shall take into account the nature, circumstances, extent and gravity of the violation committed and the policies for deterrence and future compliance with the Commission’s rules and regulations and the applicable statutes. The Commission shall also consider the respondent’s degree of culpability, history of prior offenses, ability to pay and such other matters as justice requires.

46 C.F.R. § 502.603(b).

Civil penalties are punitive in nature. The main Congressional purpose of imposing civil penalties is to deter future violations of the Shipping Act. *Stallion Cargo, Inc.*, 29 S.R.R. 665, 681 (FMC 2001); *Refrigerated Container Carriers Pty. Ltd.*, 28 S.R.R. 799, 805 (ALJ 1999).

To determine a specific amount of civil penalty is a most challenging responsibility. The matter is one for the exercise of sound discretion, essentially requires the weighing and balancing of eight factors set forth in law, and is ultimately subjective and not one governed by science. As was stated in *Cari-Cargo, Int., Inc.*, 23 SRR 1007, 1018 (I.D., F.M.C. administratively final, 1986):

. . . in fixing the exact amount of penalties, the Commission, which is vested with considerable discretion in such matters, is required to exercise great care to ensure that the penalty is tailored to the particular facts of the case, considers any factors in mitigation as well as in aggravation, and does not impose unduly harsh or extreme sanctions while at the same time deters violations and achieves the objectives of the law. (Case citation omitted.) Obviously, “[t]he prescription of fair penalty amounts is not an exact science,” and “[t]here is a relatively broad range within which a reasonable penalty might lie.” (Case citation omitted.)

*Universal Logistic Forwarding Co., Ltd.*, 29 S.R.R. 325, 333 (ALJ 2001), *adopted in relevant part*, 29 S.R.R. 474 (FMC 2002). No one statutory factor is to be weighed more heavily than any other. *Refrigerated Container Carriers Pty. Ltd.*, 28 S.R.R. at 805-806.

BOE has the burden of establishing that a civil penalty should be imposed, and if so, the amount of the civil penalty that should be assessed. The first question that must be answered in determining a civil penalty is whether the violation was willfully and knowingly committed. *Stallion Cargo, Inc.*, 29 S.R.R. at 678. To assess a civil penalty in the higher range, the evidence must establish that the violation was willful and knowing.

Once it has been determined whether the violation was willfully and knowingly committed, the eight factors set forth in section 13(c) must be weighed and balanced, bearing in mind the maximum penalty that may be assessed for the violation. *See Universal Logistic Forwarding Co., Ltd.*, 29 S.R.R. at 333 (determining a civil penalty “requires the weighing and balancing of eight factors set forth in law”).

Although the Commission may in its discretion determine how much weight to place on each factor, the Commission must make specific findings with respect to each of the factors set forth in section 13(c), regardless of whether the party on whom a fine will be imposed has participated in the hearings against him.

*Merritt v. United States*, 960 F.2d 15, 17 (2d Cir. 1992).

## 2. BOE's contentions.

BOE contends that the Commission should impose a substantial civil penalty against Oceanic Bridge.

The nature of the violations . . . compels a substantial penalty. Unlawful access to a service contract undermines the regulatory purpose and structure that Congress envisioned in authorizing the use of service contracts. Service contracts are intended solely for the benefit of the parties who negotiated and executed the contract on the basis of such negotiations including adding any lawful affiliates. Rather than utilizing its own service contract with Maersk, Respondent opted to obtain rate reductions by accessing another party's contract in deliberate and repeated disregard of the Shipping Act. By accessing these contracts, Oceanic Bridge not only trespassed on the competitive advantage gained by the lawful signatory, Dalian Haiqiao, but exposed the latter shipper to liability for payment of Maersk's freight charges, deprived Maersk of higher revenues to which it was entitled under those contracts with Oceanic Bridge and applicable to Respondent's NVOCC cargoes, and unnecessarily subjected Respondent's own customers to the risk that their cargo could be seized, detained for inspection, subjected to inspection fees, demurrage, increased freight costs, penalties, or other charges. The nature of these violations is therefore serious.

Respondent bears a high degree of culpability for its actions. It was aware of the requirements of the Shipping Act and knew that accessing a service contract to which it was not a party constituted a violation. As the consignee and delivery agent at destination, it possessed shipment documents clearly indicating that the shipments were tendered to Maersk and rated under contracts that were limited to a beneficial cargo owner not involved in any manner with these shipments. To the extent that Respondent's agents engaged in misrepresentations to the ocean carrier, Oceanic Bridge, as the licensed NVOCC, remains strictly responsible for the acts and omissions of its agents. 46 C.F.R. § 515.4(b)(2).

Although Respondent has not previously been the subject of a formal enforcement proceeding, it was the subject of a 1999 enforcement action based on the misuse of a service contract in misdescribing commodities tendered to the ocean carrier. That matter was resolved through the Commission's informal compromise procedures upon payment of a civil penalty.

With respect to ability to pay, Respondent is dissolved as a California corporation and no longer entitled to operate in that state. However, the state of California continues to recognize the existence of a dissolved corporation for purposes of winding up its affairs, defending actions against it, enabling it to discharge its obligations. See Cal. Corp. Code § 2010(a), *supra*. To these ends, California expressly authorizes enforcement of an action against a dissolved

corporation by resort to any available assets. *Id.*, § 2011(a)(1)(A). Respondent's \$75,000 NVOCC bond was in effect during the period of violations and is available to pay, among other things, any penalty assessed pursuant to Section 13 of the Shipping Act, up to the face amount of the bond. 46 U.S.C. § 40902.

(BOE Motion for Default at 11-13 (citations to record omitted).) BOE contends that a civil penalty of a minimum of \$8001 should be imposed for each of the forty-nine violations, rounding the total to \$392,000. "[I]mposition of this amount appropriately reflects the knowing and willful element of Respondent's violations of section 10(a)(1), serves to address the deterrent purposes of a civil penalty, and takes into consideration Respondent's present status." (*Id.* at 15.)

### 3. Discussion.

Section 10(a)(1) prohibits *knowingly and willfully* obtaining transportation for property at less than the rates or charges that would otherwise apply.

To act knowingly and willfully is an element of a section 10(a)(1) violation. Therefore, because these violations are *per se* knowing and willful, once an administrative law judge determines that the respondent committed the violation it is not necessary to make a separate determination as to whether the conduct was knowing and willful for the purpose of assessing penalties.

*Green Master – Possible Violations*, 29 S.R.R. at 1315. By proving the violations of section 10(a)(1), BOE has established that the violations were willfully and knowingly committed within the meaning of section 13(a)(1); therefore, it is appropriate to assess a civil penalty not exceeding \$40,000 for each violation.

Regarding the nature, circumstances, extent, and gravity of the violations committed, the evidence establishes that at the time of each of the forty-nine shipments, Oceanic Bridge had its own service contract with Maersk Line. On each shipment, rather than use its own contract with Maersk, Oceanic Bridge falsely identified the shipper as Dalian Haiqiao and obtained transportation at the lower Dalian Haiqiao service contract rates rather than the Oceanic Bridge rates that should have been applied. This circumstances warrant imposition of a significant civil penalty.

Regarding Oceanic Bridge's history of prior offenses, in an enforcement action in 1999, the Commission alleged that Oceanic Bridge misdescribed commodities on shipments transported under a service contract. The matter was resolved through the Commission's informal compromise procedures in which Oceanic Bridge executed a compromise agreement and paid a civil penalty.

Regarding Oceanic Bridge's ability to pay a civil penalty, the record indicates that Oceanic Bridge was dissolved as a corporation on December 24, 2012. FF 7, FF 50. A dissolved corporation is not likely to have any ability to pay a civil penalty. As required by the Act, Oceanic Bridge furnished a surety while it operated as a licensed NVOCC. The Act requires that the surety be available to pay any penalty imposed under section 41109. 46 U.S.C. § 40902(b)(1).

Given the nature, circumstances, extent and gravity of the willful and knowing violations committed by Oceanic Bridge, the policies for deterrence and future compliance with the Commission's rules and regulations and the applicable statutes, Oceanic Bridge's degree of culpability, history of prior offenses, and ability to pay, and such other matters as justice requires, I conclude that assessment of a civil penalty in the amount of \$392,000 is warranted.

**ORDER**

Upon consideration of the foregoing findings of fact and conclusions of law, and the determination that on forty-nine shipments respondent Oceanic Bridge International, Inc., knowingly and willfully, by means of an unjust or unfair device or means, obtained transportation by water for property at less than the rates or charges which would otherwise be applicable in violation of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. § 41102(a), it is hereby

**ORDERED** that respondent Oceanic Bridge International, Inc., **REMIT** to the United States the sum of \$392,000.00 as a civil penalty for forty-nine willful and knowing violations of the Shipping Act of 1984.



Clay G. Guthridge  
Administrative Law Judge