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August 26, 2016					
FEDERAL MARITIME COMMISSION					

FEDERAL MARITIME COMMISSION

DOCKET NO. 16-14

T. PARKER HOST, INC.

v.

KINDER MORGAN LIQUIDS TERMINALS, LLC, ET AL.

**INITIAL DECISION APPROVING AGREEMENT and
DISMISSING PROCEEDING WITHOUT PREJUDICE¹**

On August 19, 2016, complainant T. Parker Host, Inc. (TPH) and respondents Kinder Morgan Liquids Terminals, LLC, *et al.* filed a confidential Agreement settling this proceeding and a parallel proceeding in a United States district court and a motion seeking approval of the settlement. In the motion, the parties ask that this proceeding be dismissed without prejudice and that the Agreement be kept confidential and protected from public disclosure. The Agreement is approved and the request to keep the Agreement confidential is granted.

BACKGROUND

TPH is a full service shipping agency, responsible for coordinating and handling shipments and cargo on behalf of its customers at ports and harbors worldwide. Respondent Kinder Morgan, Inc., and its fourteen subsidiaries also named as respondents (Kinder Morgan) own and operate marine terminals. On June 21, 2016, TPH filed a Complaint with the Commission alleging that Kinder Morgan violated section 41106 of the Shipping Act of 1984 (Shipping Act or Act), 46 U.S.C. § 41106, by imposing a "Blacklist Notice" banning TPH from physically accessing vessels moored at Kinder Morgan marine terminals and from coordinating port calls at Kinder Morgan marine terminals. The Complaint further alleges that the ban injured the business of TPH and prevented

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.

TPH from competing in the marine terminal business. Respondents have not filed an answer to the Complaint.

On August 19, 2016, the parties filed a confidential Agreement signed by complainant T. Parker Host, Inc., its affiliate Host Terminals, Inc., and respondent Kinder Morgan, Inc., on behalf of itself and its subsidiaries and a joint motion asking for approval of the Agreement. The parties state that the Agreement is the product of an effort by the parties to achieve a commercial resolution of their dispute and to avoid the costs and risks inherent in litigation. The parties contend that the Agreement is the product of arms-length negotiations between both sides which were free of fraud, duress, or undue influence by any party, and does not contain any defects which might make it unapprovable. The parties further contend that the Agreement does not contravene law or public policy, does not discriminate against or adversely impact any third parties, and complies with the Shipping Act. The parties request that the Agreement be granted confidential treatment, stating that it contains sensitive commercial information that should be protected from public disclosure, such as non-public business plans of TPH, and arms-length discussions of sensitive internal compliance policies and procedures, akin to trade secrets.

DISCUSSION

I. THE AGREEMENT IS APPROVED.

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 consistently adhered to a 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

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).

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.

Old Ben Coal, 18 S.R.R. at 1092 (quoting 15A American Jurisprudence, 2d Edition, pp. 777-778 (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)).

Based on my review of the Agreement, which was signed by the parties after arms-length negotiations, the verified Complaint, and the record in this proceeding, and engaging in every presumption which favors a finding that the Agreement is fair, correct, and valid, I find 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. Therefore, the Agreement is approved.

II. THE REQUEST FOR CONFIDENTIALITY IS GRANTED.

Pursuant to Commission Rule 119, parties may request confidentiality of documents filed with the Commission. 46 C.F.R. § 502.119. The parties ask that the Agreement be kept confidential.

The Commission has a history of permitting agreements that settle private complaints brought pursuant to 46 U.S.C. § 41301 to remain confidential. *Streak Products, Inc. v. UTi, United States, Inc.*, FMC No. 13-04 (ALJ Sept. 10, 2014) (Initial Decision Approving Confidential Settlement Agreement and General Release and Dismissing Proceeding with Prejudice), Notice Not

to Review, Oct. 15, 2014. The full text of the Agreement has been reviewed by the undersigned and is available to the Commission. Given the parties' request for confidentiality and the Commission's history of permitting agreements settling private complaints to remain confidential, the parties' motion for confidential treatment of the Agreement is granted. The Agreement will be maintained in the Secretary's confidential files.

ORDER

In consideration of the foregoing, it is hereby

ORDERED that the Joint Motion for Approval of Settlement be **GRANTED**. The Agreement between complainant T. Parker Host, Inc., and respondent Kinder Morgan, Inc., is **APPROVED**. It is

FURTHER ORDERED that the request to keep the Agreement confidential be **GRANTED**. The Secretary is asked to keep the Agreement in the Secretary's confidential files. It is

FURTHER ORDERED that this proceeding be **DISMISSED WITHOUT PREJUDICE**.


Clay G. Guthridge
Administrative Law Judge