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BEFORE THE  
FEDERAL MARITIME COMMISSION

FILED

Docket No. 16-14

AUG 19 2016

Federal Maritime Commission  
Office of the Secretary

T. PARKER HOST, INC.

v.

KINDER MORGAN LIQUIDS TERMINALS, LLC, ET AL.

JOINT MOTION FOR APPROVAL OF SETTLEMENT

Pursuant to Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.72, Complainant T. Parker Host, Inc. and Respondents Kinder Morgan Liquids Terminals, LLC, Kinder Morgan Bulk Terminals, Inc., Kinder Morgan Services LLC, Kinder Morgan Southeast Terminals, LLC, Kinder Morgan Virginia Liquids Terminals LLC, Kinder Morgan Materials Services, LLC, Kinder Morgan G.P., Inc., Kinder Morgan Operating L.P. "A," Kinder Morgan Operating L.P. "C," Kinder Morgan Operating L.P. "D," Kinder Morgan Transmix Company, LLC, Kinder Morgan Energy Partners, Kinder Morgan Terminals, Nassau Terminals LLC, and Kinder Morgan, Inc. (together, the "Parties") hereby request that the Presiding Officer approve the attached Settlement Agreement and dismiss the instant proceeding without prejudice. The Parties further move that the Settlement Agreement be afforded confidential treatment and protected from public disclosure pursuant to Rule 5, 46 C.F.R. § 502.5.

**I. Standard of Review and Commission Policy Favoring Settlement**

The Commission reviews settlements to ensure that they do not violate any law or policy, and are free of fraud, duress, undue influence, mistake, or other defects which might make the settlement unapprovable. 46 C.F.R. §502.72(a)(3).

The Commission has a strong and consistent policy of “encourage[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 Service, Inc.*, 29 SRR 975, 978 (ALJ 2002) quoting *Old Ben Coal Co. v. Sea-Land Services, Inc.*, 18 S.R.R. 1085, 1091 (ALJ 1978). The Commission’s policies, its Rules of Practice, and the Administrative Procedures Act all encourage settlements. *Id.* 18 S.R.R. at 1092. As the ALJ recognized in *Old Ben*:

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.

*Id.* (citation omitted).

**II. The Settlement Agreement Meets the Standard for Approval**

The claims at issue in this docket and in a related action in the U.S. District Court for the Eastern District of Virginia (which is also covered by the Settlement Agreement) involve allegations that Complainant, a vessel agency, was banned from entering or coordinating port calls at Respondents’ terminal facilities, which Complainant asserted to be in violation of 46 U.S.C. § 41106. At this juncture in the proceeding Respondents have not yet filed an answer, but

anticipated contesting the complaint on both jurisdictional and substantive grounds.<sup>1</sup> Absent a negotiated settlement, litigation of the instant dispute to a conclusion likely would require substantial time and resources on both sides.

The Settlement Agreement is the product of an effort by both Parties to craft a commercial resolution to this dispute, rather than continuing down the path of litigation. The Settlement Agreement sets out certain commitments by Complainant and its affiliates regarding the handling and protection of certain information obtained at Respondents' facilities or in connection with agency work for vessels at those facilities. In exchange, Respondents make certain commitments with regard to allowing Complainant access to Respondents' facilities.

The Settlement Agreement reflects the Parties' desire to avoid the costs and risks inherent in litigation, in favor of a negotiated solution. The Agreement is the product of extensive arms-length negotiations between the two sides, which negotiations were free of fraud, duress, or undue influence by any party. The settlement is free of defects which might make it unapprovable. Further, the Settlement Agreement does not contravene law or public policy; it does not discriminate against or otherwise adversely impact any third parties, and it does not run afoul of any provision of the Shipping Act.

Allowing the Settlement Agreement to take effect will enable the Parties to put this dispute behind them promptly, avoiding further delay or disruption and benefitting the carriers and cargo interests that rely on the Parties' services. In sum, because the settlement is fair and lawful, and it is the product of prudent and considered judgment on the part of the Parties, it should be approved.

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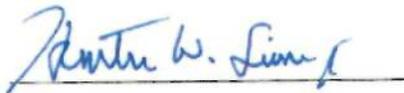
<sup>1</sup> Respondents note that the filing of the instant motion in this docket should not be construed as a waiver or admission or that any of the Respondents are "marine terminal operators" as defined by the Shipping Act of 1984 for the purposes of any future Commission actions or proceedings.

**III. The Terms of the Settlement Agreement Should Remain Confidential**

The Settlement Agreement contains sensitive commercial information that should be protected from public disclosure. Specifically, it describes non-public business plans of Complainant, and discusses at length sensitive internal compliance policies and procedures, which are appropriately treated as trade secrets. Accordingly, the Parties respectfully request confidential treatment of the Settlement Agreement in its entirety pursuant to Rule 5, 46 C.F.R. §502.5.

WHEREFORE, Complainant and Respondents, by their respective counsel, hereby respectfully request that the Settlement Agreement be approved under seal, and the complaint in this proceeding be dismissed without prejudice.

Respectfully submitted,



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Dated: August 19, 2016