

(S E R V E D)
(JULY 27, 2015)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

HANJIN SHIPPING CO., LTD.

**ORDER DENYING PETITION FOR RELIEF FROM SECTION 15 ORDER AND
GRANTING EXTENSION OF DEADLINE FOR FILING CERTAIN TERMINAL
SERVICES AGREEMENTS**

On July 10, 2015, the Commission served a Section 15 Order (Order) on the vessel-operating common carrier (VOCC) members (and potential future VOCC members)¹ of the *Pacific Ports Operational Improvements Agreement* (PPOIA) (FMC Agreement No. 201227), directing those entities to file with the Commission: (1) certain marine terminal services agreements that these members have entered into at U.S. Pacific Coast ports; and (2) information regarding the parties' authority under PPOIA to meet, discuss, and agree on measures related to chassis at those ports. The Commission ordered the VOCC members to submit the specified terminal services agreements no later than July 27, 2015, and to submit the specified information regarding chassis no later than August 10, 2015.

On July 21, 2015, Hanjin Shipping Co., Ltd. (Hanjin) provided the Commission with a copy of its notice of withdrawal from PPOIA, which was sent to the Agreement's representatives the same day. The following day, July 22, 2015, Hanjin filed with the Commission a petition for relief from the Section 15 Order. For the reasons discussed below, the Commission is denying this petition. Because the issuance of this denial coincides with the Order's July 27, 2015, deadline, the Commission is granting Hanjin a three-day extension to submit the terminal services agreements specified in the Order.

In its petition, Hanjin states that, effective immediately, it will no longer be participating in PPOIA. The company argues that, as a result, "information and documents regarding Hanjin's terminal service arrangements, chassis operations, and its views on the PPOIA authority and potential future operations, no longer appear to be relevant to the Commission's assessment of

¹ As explained in the Order, the parties have filed several amendments to the agreement that would, among other things, add additional VOCC parties. Accordingly, the Commission included those prospective VOCC parties as respondents to the Order.

PPOIA under the Shipping Act's 6(g) standard." Pet. at 1. Hanjin further asserts that providing the relevant information would be substantially burdensome. In addition to the burden of compiling and providing numerous terminal services agreements, Hanjin cites the burden of responding to the questions regarding chassis ownership, repair, and maintenance, which it describes as "complex" given the factual, legal, and labor issues involved. Hanjin also maintains that because a number of the chassis-related questions discuss PPOIA's future role, it would not be appropriate or practicable for Hanjin to weigh in on these issues. Hanjin concludes that the burden of producing the specified information far outweighs the benefit to the Commission, and requests the Section 15 Order be withdrawn as it applies to Hanjin. We find Hanjin's arguments unconvincing.

The Commission determined that the documents and information specified in the Order were needed to determine the competitive effects of PPOIA under section 6(g) of the Act (codified at 46 U.S.C. § 41307(b)), which authorizes the Commission to determine whether an agreement such as PPOIA is likely, by a reduction in competition, to result in an unreasonable reduction in transportation service or an unreasonable increase in transportation costs.

As an initial matter, we note that, in spite of Hanjin's notice of withdrawal and its statement that it will cease participating in any PPOIA matters effective immediately, it is still a member of the agreement and will continue to be a member until after the deadlines specified in the Section 15 Order have passed. Specifically, Article VIII(b) of the Agreement allows a party to withdraw from the agreement after giving not less than 60 days written notice to the other parties. Hanjin submitted its notice on July 21, 2015, making its withdrawal effective, at the earliest, on or around September 19, 2015.

Moreover, Hanjin's responses to the Section 15 Order are of value to the Commission, despite its withdrawal from the agreement. Specifically, Hanjin's terminal services Agreements will assist the Commission in evaluating the competitive effects of PPOIA on the terminal services market, including, but not limited to, the effect of Hanjin's withdrawal from the Agreement. In addition, information from Hanjin on the chassis it owns or leases, as well as any information Hanjin possesses regarding the Agreement parties' activities related to chassis operations, will assist the Commission in evaluating the complaints that the parties to PPOIA, including Hanjin, have violated or are violating the Shipping Act.

Hanjin has also failed to explain adequately how production of the relevant information will involve substantial burden. The Commission has requested a limited number of current terminal services agreements, copies of which should be readily available. Moreover, these agreements are subject to the Shipping Act and, but for a Commission-established exemption (46 C.F.R. § 535.309), would be subject to the filing and review requirements of the Act. Parties to such exempted agreements are required to make them available to the Bureau of Trade Analysis upon request "for inspection during the term of the agreement and for a period of three years after its termination." 46 C.F.R. § 535.301(d). The Commission's ability to inspect such agreements is one of the reasons that it exempted them from the Act's filing requirements, and Hanjin has a separate, independent obligation to provide the agreements.

With respect to the chassis-related information, the Section 15 Order expressly permits a collective response rather than individual responses, substantially reducing the burden on Respondents. Hanjin has failed to explain why it would be unable to sign on to a collective response and would instead need to expend significant resources preparing an individual response. The only VOCC-specific, chassis-related information requested is information regarding chassis owned or leased by the VOCC parties at U.S. Pacific Coast Ports. This information, however, is factual in nature and does not appear to be one of the “complex” requests that, according to Hanjin, would require significant resources to produce.

Based on the foregoing, we are denying Hanjin’s petition. Because the issuance of this denial coincides with the Order’s July 27, 2015, deadline, the Commission is granting Hanjin a three-day extension to submit the requested terminal services agreements. Specifically, Hanjin must submit the documents and information described in Items I through IV of the Section 15 Order no later than July 30, 2015.

NOW THEREFORE, IT IS ORDERED, that the petition of Hanjin Shipping Co., Ltd., is DENIED.

IT IS FURTHER ORDERED, that by July 30, 2015, Hanjin Shipping Co., Ltd., file with the Commission’s Bureau of Trade Analysis the documents and information described in Items I through IV of the Section 15 Order.

By the Commission.



Karen V. Gregory
Secretary