(S E R V E D)
(FEBRUARY 1, 1988)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

February 1, 1988

NO. 87-20

DELAWARE RIVER PORT AUTHORITY

v.

THE 8900 LINES

NO. 87-27

MASSACHUSETTS PORT AUTHORITY

v.

THE 8900 LINES

COMPLAINTS DISMISSED

Complainants in these consolidated proceedings have filed a motion asking that their complaints be dismissed with prejudice. Complainants state that they filed their complaints in order to challenge the legality of certain rates known as "arbitraries," which respondent 8900 Lines had filed in their tariff applicable to the ports of Philadelphia and Boston. However, the 8900 Lines later amended their tariff to delete these "arbitraries,"

effective January 1, 1988. Accordingly, complainants believe that they have fully achieved their objectives in filing their complaints and have no interest in pursuing the litigation. There is no objection to the motion. However, although cancelling the "arbitraries," respondents do not admit that they were unlawful. (See Motion at page 2.)

Whether viewed as a question of mootness because of cancellation of the subject matter of the complaints or as a settlement in lieu of litigation, the motion should be granted. The law, of course, strongly favors settlement and presumes that they are fair, correct, and valid. See, e.g., Old Ben Coal Co. v. Sea-Land Service, Inc., 21 F.M.C. 505, 512 (1978); Perry's Crane Service v. Port of Houston Authority, 22 F.M.C. 30, 33 (1979); CGM/ICT v. Maduro, 23 SRR 1539, 1540 (ALJ 1986; F.M.C. notice of finality, January 12, 1987). Because settlements in Commission proceedings occur under the overall purview of a regulatory statute, however, they are scrutinized to make sure that they do not themselves contravene any regulatory provision or policy, for example, tariff law or the law requiring any regulatory provision or policy, for example, tariff law or the law requiring that certain anticompetitive agreements be filed with the Commission before they may become effective. See the cases cited and Organic Chemicals v. Atlanttrafik Express Service, 18 SRR 1536a (1979). In the instant case, respondents have cancelled recently filed surcharges, i.e., they have returned to the status quo without entering into any ongoing agreements that require processing or adjusting payments received under tariff rates, a situation that would require further

scrutiny under Organic Chemicals, cited above. In short, respondents have amended their tariff to revert to the status quo, and complainants are understandably pleased with that decision. Under such circumstances, the parties have the right to terminate the litigation. See DRPA v. PRMSA, 14 SRR 1509 (1975) (restoration of previous service at port removes controversy); Roberts Steamship Agency, Inc. v. Port of New Orleans et al., 21 F.M.C. 492 (1978) (Commission can't compel parties in complaint case to litigate against their wishes); Smoot v. Fox, 340 F.2d 301, 303 (6th Cir. 1964) (trial judge not permitted to conduct useless trial when plaintiff asks to have complaint dismissed with prejudice); John Evans Sons, Inc. v. Majik-Kroners, Inc., 95 F.R.D. 186, 190-191 (E.D. Pa. 1982) (plaintiff's request for dismissal with prejudice should be granted). Furthermore, in No. 87-27, in which respondents have not filed an answer, complainant has the right to withdraw its complaint without my permission. See Amtrol, Inc. v. U.S. Atlantic-North Europe Conference et al., 23 SRR 1320, 1321 (ALJ; F.M.C. notice of finality, September 4, 1986); Docket Nos. 86-23/25, Active International Shippers' Association et al. v. Korea Shipping Corporation, Complaints Dismissed (ALJ), November 6, 1986; F.M.C. notice of finality, December 10, 1986 (unreported).

For the reasons stated, the complaints are dismissed with prejudice, as requested.

Norman D. Kline

Norman D. Kline
Administrative Law Judge

(S E R V E D)
(March 9, 1988)
(FEDERAL MARITIME COMMISSION)

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NOTICE

Notice is given that no appeal has been taken to the February 1, 1988, dismissal of the complaints in these proceedings and the time within which the Commission could determine to review has expired. No such determination has been made and accordingly, the dismissals have become administratively final.

Joseph C. Polking
Secretary