



UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
CHICAGO BRIDGE & IRON COMPANY N.V.)
)
a foreign corporation,)
)
CHICAGO BRIDGE & IRON COMPANY)
)
a corporation,)
)
and)
)
PTT-DES MOINES, INC.)
)
a corporation.)
_____)

Docket No. 9300

To: The Honorable James P. Timony
Administrative Law Judge

COMPLAINT COUNSEL'S RESPONSE TO RESPONDENTS'
MOTION FOR A SIXTY-DAY EXTENSION OF TIME

Complaint Counsel files this response to Respondents' Motion for a Sixty-Day Extension of Time, made pursuant to Rule 3.51 of the Commission's Rules of Practice. Rule 3.51 allows for sixty-day extensions of the one-year period for rendering an initial decision only upon a finding of "extraordinary circumstances" by the administrative law judge. Those circumstances are not present in this case. Respondents cite three principal reasons for their request: (1) the large number of depositions outstanding (approximately 20) that may not be completed prior to the July 8, 2002, deadline for the completion of discovery; (2) the discovery requests issued by Complaint Counsel on June 7, 2002 in accordance with the First Revised Scheduling Order entered May 6, 2002; and (3) the complexity of the case.

As explained below, Complaint Counsel believes that a sixty-day extension is unwarranted and recommends that exceptions to the July 8, 2002 cut-off date for discovery be granted, as necessary to complete depositions of witnesses and to complete Respondents' production of documents in response to the June 7 document requests. Otherwise maintaining the existing pretrial schedule will motivate Complaint Counsel and Respondents to refine their witness lists and move this litigation forward to a timely completion.

Nonetheless, if this Court is inclined to grant an extension of the pretrial schedule, Complaint Counsel recommends that the Court extend the date for commencement of trial by no more than four weeks. A proposed alternative schedule is attached, which provides for commencement of the hearing on October 7, 2002.¹ Under Respondents' proposed schedule, the hearing would commence on November 12, 2002, and the litigation would run into the holiday season, potentially causing difficulties in scheduling witnesses and additional delays.

The Depositions

In their motion, Respondents reference approximately 20 outstanding depositions that may not be completed by the July 8, 2002, cut-off date for discovery (Respondents' Motion at 2). During the course of this litigation, there has not been a single deposition that has been cancelled or rescheduled due to Complaint Counsel. Complaint Counsel has endeavored to meet all dates and times for depositions suggested by Respondents, even though they may not have been set at times convenient for Complaint Counsel. Moreover, Respondents have had adequate notice of

¹ The one-year anniversary of the issuance of the complaint in this matter will be October 25, 2002. Consequently, even if the hearing commences in October 2002, it will be necessary to grant at least one 60-day extension of time to complete the litigation and allow the Court time to write a decision.

Complaint Counsel's third party witnesses. There are currently 23 witnesses on Complaint Counsel's Revised Witness List.² Respondents have been aware of the identity of thirteen of these individuals since March 14, 2002, *more than three months ago*, when Complaint Counsel turned over affidavits in its possession to Respondents. Respondents became aware of the identity of eight more of these individuals on April 22, 2002, when Complaint Counsel provided its Initial Witness List to Respondents. Complaint Counsel listed only three additional individuals on its Revised Witness List on May 28, 2002.

Complaint Counsel has informed Respondents that there are a small number of witnesses that it may wish to add to its Revised Witness List; Respondents have likewise notified Complaint Counsel that they have a small number of witnesses that they may wish to add to their Revised Witness List. The parties will work cooperatively with each to make sure that any additional witnesses are identified, and deposed, as quickly as is practicable.

Complaint Counsel questions whether, after the current round of scheduled depositions has been completed on June 28, 2002, the number of depositions remaining will be as large as 20. Nine of these twenty remaining individuals are the yet unnamed remedy witnesses on Respondents' Initial and Revised Witness Lists who bear designations such as "Head of Engineering" and "Head of Estimating." (Exhibit B to Respondents' Motion). These individuals have remained unnamed since Respondents provided their Initial Witness List on April 30, 2002, despite requests from Complaint Counsel that Respondents identify these individuals. Complaint

² Complaint Counsel's Revised Witness list names 24 individuals, one of which was voluntarily removed by Complaint Counsel when it became apparent that the witness would no longer be called at trial. Complaint Counsel has informed Respondents that it may be able to remove other witnesses from its Revised Witness List as discovery progresses if it appears that the testimony from these witnesses would be duplicative.

Counsel questions how many of these unnamed individuals it will ultimately have to depose.

The Discovery Requests

Respondents cite to Complaint Counsel's June 7, 2002, discovery requests as an additional reason justifying its request for a 60-day of extension of time (Respondents' Motion at 5). Complaint Counsel issued these discovery requests in a timely fashion on June 7, 2002, in full accord with the provisions of the First Revised Scheduling Order. Respondents do not question the relevance of these discovery requests. (Respondents' Motion at 6, fn. 4). Respondents also report that it would take approximately two months to comply with the requests they find most burdensome. (Respondents' Motion at 6). Respondents could presumably complete discovery by August 7, 2002, a month prior to trial start date of September 10, 2002, under the First Revised Scheduling Order.

Complaint Counsel questions Respondents' dire predictions relating to the cost and time necessary to comply with these discovery requests. Complaint Counsel and Respondent are currently engaged in negotiations relating to Respondents' compliance with the discovery requests that will produce the documents and information that Complaint Counsel seeks, while avoiding any unwarranted burden on Respondents.

Complexity of the Case

As a final reason for seeking a 60-day extension of time, Respondent cites to the complexity of the case, which involves six different product markets. (Respondents' Motion at 7). This case is no more complex than any other antitrust case. Three of the product markets, LNG import terminals, LNG peak shaving plants, and LNG tanks, are intimately related; LNG tanks are essential components of LNG import terminals and LNG peak shaving plants.

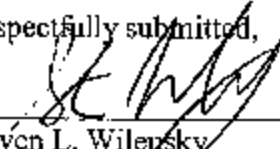
Additionally, LNG tanks, LPG tanks, and LIN/LOX tanks, which store gases in liquid form at very cold temperatures, share many characteristics and are collectively referred to within the industry as “low temperature and cryogenic tanks.”

Conclusion

Complaint Counsel respectfully requests that this Court deny Respondents’ motion for a sixty-day extension of time, or in the alternative, if the Court grants Respondent’s motion, adopt Complaint Counsel’s Second Revised Scheduling Order.

Dated: Washington, D.C.
June 18, 2002

Respectfully submitted,



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Federal Trade Commission
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Washington D.C. 20580
(202) 326-2650

Complaint Counsel

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of Complaint Counsel's Reply to Respondents' Motion for a Sixty-Day Extension of Time to be delivered by hand to

The Honorable James P. Timony
Federal Trade Commission
H-104
6th and Pennsylvania Ave. N.W.
Washington D.C. 20580

Administrative Law Judge

and by facsimile and by first-class mail to:

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Counsel for Respondents Chicago Bridge & Iron Company
N.V. and Pitt-Des Moines, Inc.

Dated: June 18, 2002

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BEFORE FEDERAL TRADE COMMISSION

In the Matter of)

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ORDER

On June 14, 2002, Respondents filed a Motion for a Sixty-Day Extension of Time. On June 18, 2002, Complaint Counsel filed a Response to Respondents' Motion for a Sixty-Day Extension of Time. Having considered the parties' arguments,

IT IS HEREBY ORDERED that Respondents' motion is denied in its entirety. Respondents have not shown extraordinary circumstances for the requested extension as required by Rule 3.51 of the Commission's Rules of Practice. Discovery may continue past the July 8, 2002 date contained in the First Revised Scheduling Order as is necessary to complete depositions of witnesses and to complete Respondents' production of documents in response to Complaint Counsel's June 7, 2002 discovery requests.

ORDERED

James P. Timony
Administrative Law Judge

Date: June __, 2002

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FEDERAL TRADE COMMISSION**

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SECOND REVISED SCHEDULING ORDER

- | | | |
|----------------|---|---|
| April 23, 2002 | - | Complaint Counsel provides preliminary witness list (not including experts) with description of proposed testimony. |
| April 30, 2002 | - | Respondents' Counsel provides preliminary witness lists (not including experts) with description of proposed testimony. |
| April 30, 2002 | - | Complaint Counsel provides expert witness list. |
| May 7, 2002 | - | Respondents' Counsel provides expert witness list. |
| May 21, 2002 | - | Status conference with ALJ to address disputes regarding discovery and other pretrial matters, if requested by parties. |
| May 28, 2002 | - | Complaint Counsel provides revised witness lists, including preliminary rebuttal witnesses, with description of proposed testimony. |
| June 3, 2002 | - | Respondents' Counsel provides revised witness list, including preliminary sur-rebuttal witnesses, with description of proposed testimony. |
| June 7, 2002 | - | Deadline for issuing document requests, requests for admission, interrogatories and subpoenas <i>duces tecum</i> , except for discovery for purposes of authenticity and admissibility of exhibits. |

- [August 5, 2002] - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- [August 5, 2002] - Complaint Counsel provides expert witness reports.
- [August 12, 2002] - Parties that intend to offer into evidence at the hearing confidential materials of an opposing party or non-party must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).
- [August 14, 2002] - Complaint Counsel provides to Respondents' counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition, copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness. Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- [August 19, 2002] - Respondents' Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including designated testimony to be presented by deposition and copies of all exhibits (except for demonstrative, illustrative or summary exhibits), and a brief summary of the testimony of each witness. Respondents' Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists and a brief summary of the testimony of each witness.
- [August 21, 2002] - Respondents' Counsel provides expert witness reports.
- [August 23, 2002] - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- [August 26, 2002] - Deadline for filing motions *in limine* and motions to strike. (except as to experts)

- [August 30, 2002] - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondents' expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit sur-rebuttal expert reports on behalf of Respondent).
- [September 6, 2002] - Exchange and serve courtesy copy on ALJ of objections to final proposed witness lists and exhibit lists. Exchange objections to the designated testimony to be presented by deposition and counter designations.
- [September 9, 2002] - Complaint Counsel files pretrial brief.
- [September 16, 2002] - Respondents' Counsel files pretrial brief.
- [September 18, 2002] - Exchange proposed stipulations of law, facts, and authenticity.
- [September 18, 2002] - Deadline for depositions of experts (including rebuttal experts).
- [September 23, 2002] - File final stipulations of law, facts, and authenticity. Any subsequent stipulations may be filed as agreed by the parties.
- [September 30, 2002] - Final prehearing conference to be held at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C. The parties are to meet and confer prior to the conference regarding trial logistics and proposed stipulations of law, facts, and authenticity and any designated deposition testimony. Counsel may present any objections to the final proposed witness lists and exhibits, including the designated testimony to be presented by deposition. Trial exhibits will be admitted or excluded to the extent practicable.
- [October 7, 2002] - Commencement of Hearing, to begin at 10:00 a.m. in room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, N.W., Washington, D.C.

All "Additional Provisions" of the February 20, 2002 Scheduling Order remain in effect.

Date: _____

James P. Timony
Chief Administrative Law Judge