

PRESIDING OFFICER'S
RULING NO. N2010-1/1

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Six-Day to Five-Day Street Delivery
and Related Service Changes

Docket No. N2010-1

PRESIDING OFFICER'S RULING
ESTABLISHING PROCEDURAL SCHEDULE

(Issued April 28, 2010)

At the April 27, 2010 prehearing conference, participants were asked their views concerning the establishment of a procedural schedule, including the length of discovery and the need for a rebuttal hearing.

Discovery. The Public Representative suggests that an initial round of discovery could be propounded within two weeks, while initial discovery could conclude by the end of May 2010. The National Newspaper Association, Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc., and the Association for Postal Commerce concur with the Public Representative's suggestions. The Greeting Card Association states that while mid-May would be too burdensome a deadline, the end of May would be feasible.

The American Postal Workers Union (APWU), and the National Association of Letter Carriers (NALC), however, believe six months of discovery may be necessary. APWU and NALC raise concerns that the Postal Service may be less than forthcoming in its responses to discovery, requiring extensive motions practice and a protracted period of discovery to develop the record.

The Postal Service states that it stands ready to answer discovery. It adds that it makes every effort to provide complete and cooperative answers to all discovery requests, and attempts to avoid unnecessary motions practice. The timeline set forth in this ruling is predicated on the Postal Service's cooperation in responding to discovery.

The Commission is mindful of the balancing it must undertake to ensure the forthcoming advisory opinion is timely and useful, and also adequately provides due process to all intervenors. The Commission also is cognizant of the background and history of this particular proposal, which the Postal Service has made available to the public in advance of filing its request.

Upon intervention in proceedings initiated under 39 U.S.C. 3661, parties may engage in discovery. The Commission noticed this proceeding on April 1, 2010. Thus, interested persons have been able to intervene and serve discovery requests since that date. Under the Commission's rules, answers to interrogatories are due within 14 days of their filing with the Commission. Based on the foregoing considerations and allotting time for counsel to review the answers and to develop questions between rounds, initial discovery concerning the Postal Service's direct case will conclude June 9, 2010.

This schedule provides ample time for discovery of the Postal Service's direct case balanced against the need to move this case forward expeditiously. It contemplates discovery will be answered by June 23, 2010, all follow-up discovery will be filed by June 30, 2010, and follow-up discovery will be answered by July 7, 2010, well in advance of the hearing. It also will accommodate the Commission's planned field hearings scheduled for May and June. The parties are encouraged to engage in informal discussion to clarify testimony and supporting materials as well as to clarify questions and to avoid overly broad or burdensome discovery requests. See 39 CFR 3001.25(c).

Several intervenors express interest in sponsoring rebuttal testimony. Recognizing that the Postal Service is the repository for information and data intervenors may need to formulate a direct case on rebuttal, the deadline for discovery for purposes of developing intervenors' direct case is July 14, 2010.

Hearings. A hearing on the Postal Service's direct case will be scheduled for the period July 12-23, 2010, in the Commission's hearing room. All hearings will begin at 9:30 a.m. unless otherwise specified. After reviewing witness availability, a later ruling will set out the dates for the appearance for oral cross-examination of Postal Service witnesses.

Participants requesting oral cross-examination of a Postal Service witness shall file notice with the Commission by July 8, 2010. The notice shall identify the witness and the topics to be covered and estimate whether the oral cross-examination will be light (less than 15 minutes), medium (15-30 minutes), or heavy (30 plus minutes).

Rebuttal testimony. Rebuttal testimony shall be filed no later than August 2, 2010. Concurrent with filing the rebuttal testimony, intervenors should indicate their witnesses' availability to testify, by day, from September 7-10, 2010. APWU and NALC request extensive lead time to prepare expert testimony and arrange for rebuttal witnesses. This schedule allows more than three months from the date of this ruling to prepare such evidence. Three months provides ample time to develop direct evidence that can be expanded to include rebuttal to information revealed during discovery and oral cross-examination.

Conclusion of discovery directed toward intervenor rebuttal testimony shall be August 18, 2010. The deadline to file notice of intent to conduct oral cross-examination of rebuttal testimony shall be August 31, 2010. The hearing to enter rebuttal testimony into the record shall take place September 7-10, 2010. The deadline to file a notice of intent to file surrebuttal testimony shall be September 10, 2010. The date to file surrebuttal testimony, if necessary, shall be September 17, 2010. The hearing to enter surrebuttal testimony into the record, if necessary, shall be September 24, 2010.

Briefs. Initial briefs must be filed by September 24, 2010, if no surrebuttal testimony is filed, or by October 5, 2010, if surrebuttal testimony is filed. Reply briefs must be filed by October 1, 2010, if no surrebuttal testimony is filed, or by October 12, 2010, if surrebuttal testimony is filed.

Additional procedural dates may be established as necessary in subsequent rulings. The schedule for the remainder of this proceeding is provided in the Attachment to this ruling.

Unrelated matters. The following motions for late acceptance have been filed with the Commission:

1. Motion for Late Acceptance of Responses of United States Postal Service Witness Dean J. Granholm to Douglas F. Carlson Interrogatories and Requests for Production of Documents (DFC/USPS-T3-9-12), filed April 27, 2010; and
2. Khaled Ghamraoui Motion for Late Acceptance of Notice of Intervention, filed April 27, 2010.

These motions are granted.

RULING

1. The schedule for the remainder of this proceeding is provided in the Attachment to this ruling.
2. The motions for late acceptance listed in the body of this ruling are granted.

Ruth Y. Goldway
Presiding Officer

Procedural Schedule for Docket No. N2010-1

(April 28, 2010)

Close of initial discovery on the Postal Service's direct case	June 9, 2010
Notice of intent to conduct oral cross-examination	July 8, 2010
Hearing on the Postal Service's direct case (9:30 AM in the Commission's hearing room)	July 12-23, 2010
Close of discovery for developing intervenors direct case	July 14, 2010
Filing of rebuttal testimony	August 2, 2010
Conclusion of discovery directed towards rebuttal testimony	August 18, 2010
Notice of intent to conduct oral cross-examination (rebuttal)	August 31, 2010
Hearing to enter rebuttal testimony into the record (9:30 AM in the Commission's hearing room)	September 7-10, 2010
Notice of intent to file surrebuttal testimony	September 10, 2010
Filing of surrebuttal testimony (if requested)	September 17, 2010
Hearing to enter surrebuttal testimony into the record (9:30 AM in the Commission's hearing room, if necessary)	September 24, 2010
Filing of briefs If no surrebuttal testimony filed If surrebuttal testimony filed	September 24, 2010 October 5, 2010
Filing of reply briefs If no surrebuttal testimony filed If surrebuttal testimony filed	October 1, 2010 October 12, 2010