

PRESIDING OFFICER'S
RULING NO. MC2006-3/1

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

Rate and Service Changes to Implement
Baseline Negotiated Service Agreement
With Washington Mutual Bank

Docket No. MC2006-3

PRESIDING OFFICER'S RULING
ESTABLISHING PROCEDURAL SCHEDULE

(Issued May 2, 2006)

Prehearing conference. Several issues were discussed at the April 25, 2006 prehearing conference. The settlement coordinator reported that a settlement conference had taken place the morning of April 25, 2006, with several parties in attendance. He stated, “[a]t the moment, it does not appear that a settlement is, or any kind of agreement, is ripe for consideration among the parties.” Tr. 1/8. He asserts that at this time no party has expressed an interest in presenting a direct case in opposition to the Postal Service. He proposes to not have another settlement conference until the written discovery period has concluded.

Washington Mutual Bank informed the Commission, and all parties, that shortly it will file errata to its 2005 First-Class Mail volumes, which it asserts have been greatly underestimated. Tr. 1/9. Washington Mutual Bank raises the possibility that this may influence the parties’ intentions for discovery.

Valpak requests that discovery stay open until June 23, 2006. *Id.* at 10. The Postal Service contends that June 23, 2006 is excessively long for a discovery period, and proposes that discovery conclude three weeks from the filing of Washington Mutual

Bank's new volume estimates. *Id.* at 11-12. OCA requests that discovery remain open for several more weeks.¹

Discovery. The Postal Service has filed its Request as a new baseline case, which is an indication that discovery may be necessary to explore new issues. Washington Mutual Bank was forthright in indicating early in the proceeding a need to revise certain volume data, and that participants may want to conduct discovery related to this new volume data.

To assure that participants are provided adequate time for discovery, a discovery cutoff date will not be established at this time. Participants may provide an estimate of the time needed for discovery after the filing and review of Washington Mutual Bank's errata to its 2005 First-Class Mail volumes. Estimates shall be due seven calendar days after Washington Mutual Bank files its errata.

Limitation of issues. The Postal Service filed a proposal for limiting the issues for considered in this case.² The settlement coordinator reported that participants of the settlement conference expressed opposition to various components of the Proposal.³ Further, OCA, Newspaper Association of America, and Valpak have filed objections to various aspects of the Postal Service's Proposal.⁴

Limiting issues for consideration can be a valuable tool to focus on the important issues in a case and for generally streamlining a proceeding. However, this requires a degree of consensus as to the relevant issues to be excluded among the participants, or the identification of issues that clearly need not be examined. Absent such a consensus or clear identification, the Presiding Officer will not act on the Postal Service's Proposal.

¹ Office of the Consumer Advocate Response to Order No. 1458, April 25, 2006 (OCA Response).

² United States Postal Service Proposal for Limitation of Issues, March 29, 2006 (Proposal).

³ Tr. 1/13-14. The settlement coordinator did report that there was no opposition to a proposal to limit consideration of "the finding that the provision of incentives to high-cost mailers to discontinue high cost behavior should not, in the abstract, disqualify a proposed NSA[.]" Proposal at 1. It is not clear what, if any, significance this issue will have in regard to the Postal Service's Request, as proposed.

⁴ OCA Response; Comments and Partial Opposition of the Newspaper Association of America on Postal Service Proposal for Limitation of Issues, April 24, 2006; and Valpak Direct Marketing Systems,

Late filed responses. The Postal Service filed Motion for Late Acceptance of Response of United States Postal Service Witness Ayub to Interrogatories of the Office of Consumer Advocate (OCA/USPS-T1-1-5), April 19, 2006. Washington Mutual Bank filed Motion for Late Acceptance to Response of Washington Mutual Bank Witness Michael Rapaport to Interrogatories of Office of the Consumer Advocate (OCA/WMB-T1-1-10), April 20, 2006. These motions are granted.

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1. Participants may provide an estimate of the time needed for discovery after the filing and review of Washington Mutual Bank's errata to its 2005 First-Class Mail volumes. Estimates shall be due seven calendar days after Washington Mutual Bank files its errata.
2. The Presiding Officer will not act on the United States Postal Service Proposal for Limitation of Issues, filed March 29, 2006.
3. Motion for Late Acceptance of Response of United States Postal Service Witness Ayub to Interrogatories of the Office of Consumer Advocate (OCA/USPS-T1-1-5), filed April 19, 2006, is granted.

4. Motion for Late Acceptance to Response of Washington Mutual Bank Witness Michael Rapaport to Interrogatories of Office of the Consumer Advocate (OCA/WMB-T1-1-10), filed April 20, 2006, is granted.

George Omas
Presiding Officer