

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

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 June 28, 2006)

On May 15, 2006, the Postal Service and Washington Mutual Bank (WMB) filed a joint pleading requesting a temporary suspension of the proceeding.¹ The co-proponents requested additional time to review the impact of the recently issued opinions in Docket Nos. MC2004-3 and MC2005-3, and to incorporate the previously identified corrections to historical volume into their presentations, including the revision of witnesses Rapaport's and Ayub's testimonies. The practical effect of this request was the suspension of the requirement to respond to discovery requests until such time that the co-proponents could revise their presentations.²

The Postal Service filed revisions to the Request, Attachments A and B to the Request, and Appendix A to witness Ayub's testimony on June 7, 2006.³ The Postal

¹ Joint Motion of the United States Postal Service and Washington Mutual Bank for Temporary Suspension of Proceedings, May 15, 2006.

² A procedural schedule had not been established in this docket in anticipation of the need to revise volume estimates. Presiding Officer's Ruling No. MC2006-3/2, issued May 15, 2006, temporarily suspended the requirement to respond to discovery requests.

³ Notice of the United States Postal Service Concerning Filing of Revisions to Request and Testimony, June 7, 2006.

Service filed a supplement to witness Ayub's testimony on June 8, 2008.⁴ WMB filed revisions to witness Rapaport's testimony, as errata, on June 8, 2006.⁵ With the filing of these documents, the suspension of the requirement to respond to discovery requests was lifted.

Participants were provided an opportunity to comment on establishing a discovery period.⁶ OCA filed timely comments indicating that it could better inform the Presiding Officer on an appropriate discovery period shortly after the filing of responses to interrogatories OCA/USPS-T1-25-27.⁷ On June 28, 2006, OCA supplemented its comments requesting that discovery remain open "until the Postal Service provides a full Panzar test of the type contemplated by the Commission in its recent opinion in the Bank One case."⁸ Because of the complexity of applying the Panzar test, OCA contends that oral cross-examination would not be a profitable means for obtaining information on this issue. At the prehearing conference, the Postal Service commented that three weeks from the date that the errata were filed would be a suitable period of time for participants to explore issues.⁹

A review of the revisions to the co-proponent's presentations, and the concerns expressed by OCA in regard to the effectiveness of oral cross-examination in certain areas, justify allowing additional discovery. However, the open-ended proposal by OCA to not set a date for close of discovery is not conducive to bringing this docket to a

⁴ Notice of the United States Postal Service Concerning Filing of Supplemental Testimony, June 8, 2006; Notice of the United States Postal Service Concerning Filing of Revisions to USPS-T-1 (Attachment), June 13, 2006.

⁵ Washington Mutual Bank (WMB) Notice Regarding Errata to Testimony of Witness Michael Rapaport (WMB-T-1), and Filing of Replacement Copy (Errata), June 8, 2006.

⁶ Presiding Officer's Ruling No. MC2006-3/1. The comments were due seven days after filing of errata to Washington Mutual's volume estimates.

⁷ Office of the Consumer Advocate Response to Presiding Officer's Ruling No. MC2006-3/1, June 15, 2006. Responses to interrogatories OCA/USPS-T1-25-27 were delayed, in part, due to the temporary suspension of the requirement to respond to discovery requests.

⁸ Office of the Consumer Advocate Further Response to Presiding Officer's Ruling No. MC2006-3/1, June 28, 2006, at 2.

⁹ Tr. 1/12.

conclusion, and will not be adopted.¹⁰ Discovery shall be allowed to continue through July 12, 2006.

A schedule of events in this proceeding is established as shown in the Attachment to this ruling. A hearing on the co-proponent's direct case is scheduled for July 31, 2006, at 10:00 a.m. in the Commission's hearing room. If necessary, the hearing may extend through August 1, 2006. Participants shall indicate the need for a hearing, and the expected amount of oral cross-examination, by July 26, 2006. If no need for a hearing is indicated, the hearing will be cancelled and the schedule appropriately modified. If there is a need for a hearing, the Postal Service's witness shall appear first, followed by Washington Mutual Bank's witness.

Participants shall indicate their intentions to file a direct case, or rebuttal to the co-proponent's direct case, by August 1, 2006. Such evidence shall be filed by August 17, 2006.

A subsequent procedural schedule will be issued to address the remainder of the proceeding once the need for rebuttal testimony is established.

In an unrelated matter, on June 23, 2006, the Postal Service filed a Motion of United States Postal Service for Late Acceptance of Filing of Witness Ayub Responses to Interrogatories of the Office of Consumer Advocate (OCA/USPS-T1-25-27). The responses were filed two days late. This motion is granted.

¹⁰ OCA has requested that the Postal Service provide a Panzar test based upon WMB's before and after rates volumes. The Postal Service has responded that it has not performed a Panzar test, and that it is not immediately obvious how such an analysis could be carried out. See Postal Service response to OCA/USPS-T1-27 provided in Response of United States Postal Service Witness Ayub to Interrogatories of the Office of Consumer Advocate (OCA/USPS-T1-25-27), June 23, 2006.

RULING

1. The procedural schedule for Docket No. MC2006-3 is established as shown in the Attachment to this ruling.

2. The Motion of United States Postal Service for Late Acceptance of Filing of Witness Ayub Responses to Interrogatories of the Office of Consumer Advocate (OCA/USPS-T1-25-27), filed June 23, 2006, is granted.

George Omas
Presiding Officer

Docket No. MC2006-3

PROCEDURAL SCHEDULE

June 7-8, 2006	Filing of co-proponent's revised presentation
July 12, 2006	Close of discovery directed to co-proponents
July 26, 2006	Identification of need for hearing and expected amount of oral cross-examination
July 31, 2006	Tentative hearing for cross-examination of co-proponent's direct case (10:00 a.m., Commission's Hearing Room)
August 1, 2006	Notice of intent to file rebuttal testimony due
August 17, 2006	Deadline for filing of case-in-chief of each participant, including rebuttal to the co-proponent's case