

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley Vice Chairman;
Mark Acton; and
Robert G. Taub

Mail Processing Network
Rationalization Service Changes, 2012

Docket No. N2012-1

ORDER DENYING MOTION FOR RECONSIDERATION
OF RULING ESTABLISHING PROCEDURAL SCHEDULE

(Issued January 31, 2012)

On January 18, 2012, the Postal Service filed a motion which “requests that the Commission reconsider the current procedural schedule and establish a new procedural schedule that will ensure issuance of its Advisory Opinion by mid-April, 2012.”¹ The Presiding Officer has certified this issue to the Commission for consideration.²

This request effectively asks that the procedural schedule recently established after hearing and considering the scheduling concerns of all participants, including the Postal Service, be reduced by several months. Such a substantial reduction in

¹ Motion for Reconsideration of Presiding Officer’s Ruling No. N2012-1/5 Establishing Procedural Schedule, January 18, 2012, at 4 (Motion).

² P.O. Ruling N2012-1/12, Presiding Officer’s Ruling Certifying to the Commission the Postal Service’s Motion for Reconsideration of the Ruling Establishing the Procedural Schedule, January 30, 2012.

schedule appears inconsistent with due process afforded all participants when conducting a hearing on the record under sections 556 and 557 of title 5. The Motion is denied.

Background. Presiding Officer's Ruling No. N2012-1/5 established the current procedural schedule after a scheduling conference held at the request of the Postal Service, and after review of written participant comments, including those received from the Postal Service.³ Participants were asked for proposals concerning an overall procedural schedule. Tr. at 1/39. None was forthcoming. Individual elements of potential procedural schedules were discussed. However, accepting the most aggressive scheduling suggestions offered by any party, including the Postal Service, would not have produced a procedural schedule which would ensure issuance of an advisory opinion by mid-April, 2012.⁴

Before the Commission is permitted to issue an advisory opinion, it is required to provide an opportunity for hearing on the record.

The Commission shall not issue its opinion on any proposal until an opportunity for hearing on the record under sections 556 and 557 of title 5 has been accorded to the Postal Service, users of the mail, and an officer of the Commission who shall be required to represent the interests of the general public.

39 U.S.C. § 3661(c). Participants justified requests for hearings on the record. The Commission has procedures in place, both by precedent and rule, to implement these

³ Presiding Officer's Ruling Establishing Procedural Schedule, January 12, 2012 (P.O. Ruling N2012-1/5). A prehearing conference was held on January 4, 2012. Written comments were filed by: American Postal Workers Union, AFL-CIO, Comments on Schedule and Other Procedural Matters, January 6, 2012; Greeting Card Association Response to Public Representative's Notice of Proposed Procedural Schedule, January 9, 2012; Statement Concerning Scheduling Submitted by the National Association of Letter Carriers, AFL-CIO, January 6, 2012, and Supplemental Statement Concerning Scheduling Submitted by the National Association of Letter Carriers, AFL-CIO, January 9, 2012; Statement of the National Postal Mail Handlers Union Regarding Timelines for the Completion of Discovery on the Postal Service's Direct Case and the Submission of Rebuttal Testimony, January 6, 2012; Public Representative Notice of Proposed Procedural Schedule, January 5, 2012; United States Postal Service Reply to Comments Regarding Scheduling and Other Procedural Matters, January 9, 2012.

⁴ The Postal Service's instant Motion does not include a proposal for revising the procedural schedule to meet its proposed end date.

requirements, which provide due process to all participants. The procedures are flexible enough to accommodate various complexities of cases, and levels of controversy, but also include procedural steps that once triggered require somewhat rigid increments of time.

In this instance, the Postal Service's case is complex, including the testimony of 13 witnesses and over 50 library references. Participants must be provided with a reasonable opportunity to review and probe the Postal Service's direct case. Several participants are considering filing rebuttal cases. Expert rebuttal witnesses must be retained and provided with an opportunity to develop testimony. The Postal Service (and in this case other participants) must be provided with a reasonable opportunity to review and probe this material. An opportunity for surrebuttal is then provided. At the conclusion of each major step, hearings are held to allow for oral cross-examination and to enter the testimony into the record. There is the filing of briefs and reply briefs. Finally, time must be allotted for the Commission to review the record and develop a written advisory opinion. A reasonable amount of time, consistent with the complexity of the case, must be provided for each step to ensure due process.

As discussed in the scheduling ruling, most dates appearing on the schedule are driven by the due process requirements that flow from these procedures. The two areas where there is some scheduling flexibility, the initial discovery period and the date for filing rebuttal testimony, have been carefully considered to balance the requests of both the Postal Service and other participants. See P.O. Ruling N2012-1/5 at 2.

Participants, including the Postal Service, were also asked for proposals concerning special procedures that should be put in place in this docket. Tr. at 1/39. As the Postal Service should be aware, special procedures previously have been employed to speed up the discovery process. Consistent with the complexity of this case, this suggestion was not presented.⁵

⁵ As evidence of the complexity of the material involved and the time necessary for the Postal Service to formulate answers to questions regarding this material, to date the Presiding Officer has approved 11 Postal Service motions for late acceptance of responses to Presiding Officer's Information

Postal Service Motion. The Postal Service argues the well known financial challenges it faces make it imperative to be able to move forward with its proposals in a timely manner. Motion at 3. The Postal Service reiterates its desire to begin implementation of the service changes by mid-May, 2012. *Id.* at 2. However, the Postal Service provides no discussion of how to comply with sections 556 and 557 of title 5, which govern this proceeding. Furthermore, the Postal Service provides no suggestions for modifying any element of the current procedural schedule to reach its goal of obtaining an Advisory Opinion by mid-April 2012.

Participant replies. American Postal Workers Union, AFL-CIO (APWU), National Postal Mail Handlers Union (NPMHU), and the Public Representative, filed replies opposing the Motion, and supporting the current procedural schedule.⁶

APWU contends the Postal Service has given no consideration to the Commission's statutory responsibilities, and ignores the due process interests of participants, the complexity of issues, and the severity of impacts of the proposals before the Commission. APWU Reply at 1.

APWU asserts the Postal Service's request is complex; accompanied by the testimony of 13 witnesses and numerous library references. *Id.* at 2. It notes that several participants have indicated an intent to file rebuttal testimony. It asserts that ample time must be provided to properly review, evaluate, and rebut the Postal Service's direct case, which is not possible under the Postal Service's proposed schedule.

APWU contends this case is no less complex than, and shares similarities with, Docket No. N2006-1. It notes Docket No. N2006-1 spanned 10 months. It argues that

Requests or responses to interrogatories from participants. P. O. Ruling N2012-1/9, Presiding Officer's Ruling Granting Motions for Late Acceptance, January 25, 2012.

⁶ Reply of American Postal Workers Union, AFL-CIO in Opposition of USPS Motion for Reconsideration of Presiding Officer's Ruling N2012-1/5 Establishing Procedural Schedule, January 24, 2012 (APWU Reply); Reply of the National Postal Mail Handlers Union (NPMHU) in Opposition to USPS Motion for Reconsideration of Presiding Officer's Ruling N2012-1/5, January 25, 2012 (NPHMU Reply); Public Representative Response to Postal Service Motion for Reconsideration, January 25, 2012 (PR Comments).

compliance with 39 U.S.C. § 3661(c) requires the Commission to provide more than a cursory review of the Postal Service's proposals, but contends a cursory review is all that could be provided under the Postal Service's proposed schedule. *Id.* at 3.

NPMHU notes that the Postal Service presents no new facts or arguments in its Motion, but merely reminds the Commission of the financial difficulties faced by the Postal Service. NPMHU Reply at 1. NPMHU contends that the Postal Service's financial condition does not justify denying participants sufficient time to review and understand the complicated case presented by the Postal Service. *Id.* NPMHU submits the Commission has properly weighed the need for expedition against the time required for adequate review. *Id.* at 2.

The Public Representative asserts the scheduling matter already has been fully discussed and litigated, and further changes to the schedule at this time would deny due process to the parties. He mentions the burden that would be imposed by having to renegotiate expert witness contracts due to a shortened schedule, and the reduced utility of any rebuttal testimony that might result. He contends the advisory opinion would essentially be based on a notice and comment procedure. PR Comments at 1-2.

The Public Representative notes that the Motion cites to the Postal Service's financial condition, but omits any reference to title 5 and the rights of the parties. He asks the Presiding Officer to uphold the due process rights of the parties provided through title 5, and allow the development of a robust record. *Id.* at 3.

Finally, the Public Representative discusses the inconsistencies in the Postal Service's request for expedition with its actions. Appreciating the complexity of the case and the effort required to file the request, the Public Representative still notes that the Postal Service briefed outside parties about the network changes in August and intended to file a request with the Commission in October, but did not actually file a request until December. He also notes the 6 days it took for the Postal Service to file the motion for reconsideration. *Id.* at 4.

Conclusion. After careful consideration of all oral and written comments, the current procedural schedule is slightly more than one month longer than that suggested

by the Postal Service at the scheduling hearing and in its written comments.⁷ It also is significantly shorter than the schedule based upon completion of Area Mail Processing (AMP) studies suggested by some participants. The procedural schedule carefully balances the Postal Service's request to expedite and streamline the proceeding and participants' rights to adequately explore and comment on the Postal Service's proposals.

All participants were provided an opportunity to weigh in on the development of the schedule. No new information, or alternative schedule, has been provided by the Postal Service to persuade the Commission that a change to the schedule is warranted at this time. The complexity of the case appears to justify the schedule as issued. The significant reduction in schedule duration, as proposed by the Postal Service would deny participants adequate opportunity to understand the Postal Service's proposals, and deny the Postal Service an adequate opportunity to understand participants' evidence and prepare rebuttal. This would be contrary to the due process required of the Commission in such cases under 5 U.S.C. § 556 and 557. The Motion is denied.

It is ordered:

1. The Commission accepts certification as described in Presiding Officer's Ruling Certifying to the Commission the Postal Service's Motion for Reconsideration of the Ruling Establishing the Procedural Schedule, filed January 30, 2012.

⁷ The Postal Service's proposal would place the filing of reply briefs in the mid-June timeframe. Time then would have to be allotted for the Commission to prepare the Advisory Opinion. This significantly exceeds the mid-April timeframe now requested by the Postal Service.

2. The Motion for Reconsideration of Presiding Officer's Ruling No. N2012-1/5 Establishing Procedural Schedule, filed January 18, 2012, is denied.

By the Commission.

Shoshana M. Grove
Secretary