

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2001

Docket No. R2001-1

COMMENTS OF THE UNITED STATES POSTAL SERVICE AND PROPOSED
ALTERNATIVE PROCEDURAL SCHEDULE

Presiding Officer's Ruling R2001-1/1 (POR 1) circulated a proposed hearing schedule for the instant docket and sought comments prior to the prehearing conference scheduled for October 25, 2001. In the following, the Postal Service makes several observations regarding the proposed schedule, and respectfully proposes an alternative schedule that it believes would further enhance the opportunity to achieve expedition.

The Postal Service requested expedition when it filed its Request on September 24, 2001.¹ To date, only one party, Postcom, has commented.² While not opposing the request in principle, Postcom could think of only one change to expedite proceedings, namely, shortening the time for the Postal Service to respond to interrogatories. Yet, Postcom expressed skepticism that even this measure would be effective, and concluded that expectations of greater than usual speed in the litigation were unrealistic.

¹ United States Postal Service Request for Expedition, Docket No. R2001-1 (Sept. 24, 2001)

² Postcom Response to the United States Postal Service Request for Expedition, Docket No. R2001-1 (Oct. 11, 2001)

POR 1 described its proposed schedule as “intended to balance the Postal Service’s desire for expedition and participants’ need for sufficient time to fully understand the Service’s request.” It did not elaborate or explain how the specific elements of the schedule would meet this overall objective. The schedule’s principal distinguishing feature consists of a novel bifurcation of discovery and hearings directed at the Postal Service’s direct case. Under this proposal, Postal Service testimony would be divided into two categories, “testimony giving rise to complex discovery or procedural disputes” (complex testimony), and all other testimony (simple testimony). POR 1 stated that, “for the schedule to operate successfully, Postal Service witnesses must be available during both hearing sessions.” The determination of which testimony would fall into which category, for purposes of terminating discovery and scheduling hearings, would be made after the Postal Service filed its report on the availability of witnesses (November 13 under the proposed schedule). At that point, discovery against the simple testimony would have until November 26 to conclude. Discovery against the complex testimony would be allowed approximately two more weeks to conclude (about four weeks from the Postal Service’s report on availability). POR 1 does not explain what substantive or other criteria would be used to determine whether testimony is of sufficient complexity to place it in one category or another.

In most other respects, the proposed schedule appears to align fairly closely to the historical pattern of procedural deadlines established in prior rate cases since 1980. Comparing it to Docket No. 2000-1, the proposed schedule appears to allow less time for filing rebuttal testimony, after the scheduled end of hearings on the intervenors’ direct cases. In Docket No. R2000-1, however, the original date for filing rebuttal was

deferred in order to provide more time to incorporate rebuttal to updated test year forecasts, which were required by the Commission's decision to create a new base year founded on the FY 1999 Cost and Revenue Analysis.³ The original schedule established at the beginning of Docket No. R2000-1 provided the same 10 days between the end of intervenor hearings and the filing of rebuttal testimony, as the proposed schedule provides here.

The Postal Service believes that there are more opportunities to achieve expedition than are reflected in the proposed schedule, or in Postcom's suggestion that expedition be accomplished by establishing shorter deadlines for discovery responses from the Postal Service. Given the other elements of the proposed schedule, the bifurcation of hearings on the Postal Service's direct case conceivably could be justified by the awkward positioning of the December-January holidays, in relation to the timing of the Postal Service's Request. In itself, however, the proposed bifurcation does not appear to facilitate the objective of expedition. Furthermore, the bifurcation of discovery expands the burden on the Postal Service. The November 26 deadline for discovery against the simple testimony conforms to the historical average of discovery periods for the Postal Service's direct case. The December 10 discovery deadline for the complex testimony, however, expands the historical average by about two weeks. While the discovery period was also expanded about one week in Docket No. R2000-1 (to 70 days), the proposed schedule here extends the deadline another full week, for the most complex testimony in the Postal Service's direct case. Furthermore, the failure to make

³ Presiding Officer Ruling Revising the Procedural Schedule to Accommodate Actual FY 1999 CRA Cost Data, No. R2000-1/71, Docket No. R2000-1 (May 26, 2000).

clear what standards would be applied, combined with the relatively late determination (after November 13), would seem to further complicate the schedule.

More significantly, POR 1 does not explain what degree of expedition might be expected, if any. Measured from the filing of reply briefs (May 23 in the proposed schedule), the proposed schedule allows 62 days for the Commission to analyze the record and write an opinion. That calculation assumes no expedition, but rather a 10-month schedule. Compared to omnibus rate cases since 1980, this is only a few days more than the average amount of time taken, after reply briefs, to issue a Recommended Decision. If one were to assume that only a two-week acceleration of the Recommended Decision were sought, the Commission would be left with 48 days after reply briefs.

The Postal Service is therefore proposing an alternative schedule (attached) that it believes represents a more streamlined and less complicated approach to the same objective, but that would produce significantly greater expedition (see Comparison of Schedules, attached). Rather than increasing the time for discovery against the Postal Service, the attached alternative would provide for a uniform period of approximately two months of discovery applicable to all testimony. This amount of time is consistent with the historical average for discovery against the Postal Service.⁴ Rather than requiring hearings to be bifurcated according to unspecified criteria, the alternative schedule would provide three weeks of uninterrupted hearings concluding on December

⁴ The reasonableness of a two-month discovery period is reinforced in the instant case, since intervenors appear to have gotten a quick start on discovery. As of today, the Postal Service will have answered about 200 interrogatories (not counting multiple
(continued...)

21, before Christmas. Rather than hearings resuming one day after the New Years' holiday, hearings under the alternative schedule would not resume again until late February. Furthermore, rather than having 14 days following the end of hearings on the Postal Service's direct case to prepare and file testimony, intervenors would have 24 days, including 13 days following New Years. The period for discovery against intervenors would correspond to the 28 days afforded under the proposed schedule in POR 1. Hearings on intervenor cases would begin 15 days after the end of discovery, rather than 19 days, as proposed in POR 1. Furthermore 14 work days, rather than 15, have been set aside for intervenor hearings. After that, the intervals proposed in the alternative schedule track those in the POR 1 schedule. Finally, assuming that a Recommended Decision were issued on June 24, a full month prior to the statutory deadline of July 24, the Commission would have nearly eight weeks (53 days), after the filing of reply briefs, to analyze the record, write an opinion, and issue its Recommended Decision.

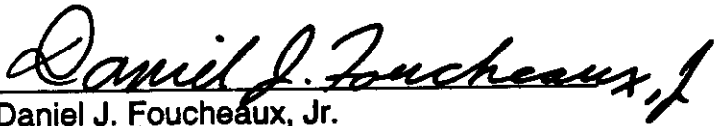
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parts), while at a similar point in time during Docket No. R2000-1, the Postal Service had answered fewer than half as many interrogatories.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:


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October 22, 2001

ALTERNATIVE PROCEDURAL SCHEDULE

September 24, 2001	Postal Service Request filed
October 25, 2001	Prehearing Conference
November 13, 2001	Identify expected amount of oral cross-examination. Report on the availability of witnesses.
November 23, 2001	Completion of discovery on the Postal Service's direct case
December 3 – 21, 2001	Hearings for cross-examination of the Postal Service's direct case
January 14, 2002	Filing of the case-in-chief of each participant, including rebuttal to the Postal Service
February 11, 2002	Identify expected amount of oral cross-examination. Report on the availability of witnesses.
February 11, 2002	Completion of discovery directed to intervenors and the OCA
February 26 – March 15, 2002	Evidentiary hearings on the cases-in-chief of intervenors and the OCA
March 6, 2002	Completion of discovery directed to the Postal Service
March 25, 2002	Filing of evidence in rebuttal to the cases-in-chief of participants other than the Postal Service)
April 3 – 12, 2002	Hearings on rebuttal to participants' direct evidence
April 22, 2002	Filing of initial briefs
May 2, 2002	<i>Filing of reply briefs</i>
May 6 – 7, 2002	Oral argument (if requested)

COMPARISON OF SCHEDULES
(R2000-1, Proposed R2001-1, Alternative R2001-1)

Stage	R2000-1		R2001-1 Proposed		R2001-1 Alternative	
Filing	1-12-2000		9-24-2001		9-24-01	
Prehearing Conference	2-16-2000	35 days after filing	10-25-01	31 days after filing	10-25-01	31 days after filing
Completion of Discovery – USPS	3-23-2000	70 days after filing			11-23-01	60 days after filing
Completion of Discovery – USPS (simple)			11-26-01	63 days after filing		
Completion of Discovery – USPS (complex)			12-10-01	77 days after filing		
Hearings USPS Direct Case begin	4-11-2000	19 days after end of discovery			12-3-01	10 days after end of discovery
Hearings USPS Direct Case (simple) begin			12-13-01	17 days after end of discovery (simple)		
Hearings end	5-9-2000	28 days after beginning of hearings			12-21-01	18 days after start of hearings (15 hearing days)

Hearings end (simple)			12-20-01	7 days after start of hearings (simple) (6 days of hearings)		
Hearings USPS Direct Case (complex) begin			1-2-02	23 days after end of discovery (complex)		
Hearings USPS Direct Case (complex) end			1-16-02	14 days after start of hearings (complex) (11 days of hearings)		
Intervenors' Cases Filed	5-22-2000	13 days after end of hearings	1-30-02	41 days after end of hearings (simple) 14 days after end of hearings (complex)	1-14-02	24 days after end of hearings
Intervenors cases (rebuttal to Raymond and Baron) filed	5-30-2000	21 days after end of hearings				
Completion of Discovery against Intervenors	6-19-2000	28 days after filing testimony	2-27-02	28 days after filing testimony	2-11-02	28 days after filing testimony

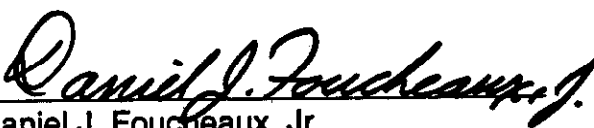
Hearings on Intervenors' Direct Cases begin	7-6-2000	17 days after end of discovery	3-18-02	19 days after end of discovery	2-26-02	15 days after end of discovery
Basic Update (FY 1999 CRA and test year estimates) due	7-7-2000					
Hearings end	7-20-2000	14 days after start of hearings	4-5-02	18 days after start of hearings (15 days of hearings)	3-15-02	17 days after start of hearings (14 days of hearings)
Hearings on testimony submitted by USPS on NOI No. 3	7-21-2000					
Test year updates beyond basic	7-21-2000					
Technical conferences on revised TY forecasts	7-26-2000 to 7-28- 2000					
Completion of Discovery Against USPS	7-31-2000	200 days from filing	3-27-02	184 days from filing	3-6-02	163 days from filing

Hearings on USPS revisions to Test Year forecasts	8-3-2000 to 8-4-2000					
Rebuttal Cases Filed	8-14-2000	24 days after end of intervenor hearings	4-15-02	10 days after end of intervenor hearings	3-25-02	10 days after end of intervenor hearings
Filing changes to cases in chief incorporating revisions to test year forecasts	8-14-2000					
Hearings Rebuttal begin	8-22-2000	8 days after filing of rebuttal testimony	4-24-02	9 days after filing of rebuttal testimony	4-3-02	9 days after filing of rebuttal testimony
Rebuttal Hearings End	8-31-2000	9 days after start of hearings	5-3-02	9 days after start of hearings (8 days of hearings)	4-12-02	9 days after start of hearings (8 days of hearings)
Close of evidentiary record	9-8-2000					
Initial Briefs	9-13-2000	12 days after end of rebuttal hearings	5-13-02	10 days after end of rebuttal hearings	4-22-02	10 days after end of rebuttal hearings

Reply Briefs	9-22-2000	9 days after initial briefs filed	5-23-02	10 days after initial briefs filed	5-2-02	10 days after initial briefs filed
Oral Argument	None		6-4-02 to 6-5-02		5-6,7-02	
PRC Recommend ed Decision (expedited)			7-10-02 (9 ½ months)	48 days after reply briefs filed	6-24-02 (9 months)	53 days after reply briefs filed
PRC Recommend ed Decision	11-13- 2000	52 days after reply briefs filed	7-24-02 (10 months)	62 days after reply briefs filed	7-24-02 (10 months)	83 days after reply briefs filed

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.


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