

Before The
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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OFFICE OF THE SECRETARY

Postal Rate and Fee Changes, 2001)

Docket No. R2001-1

ANSWER OF THE OFFICE OF THE CONSUMER ADVOCATE
TO UNITED STATES POSTAL SERVICE REQUEST FOR EXPEDITION
(October 24, 2001)

The Office of the Consumer Advocate ("OCA") hereby answers the request of the United States Postal Service for maximum expedition in the litigation of its Request for a Recommended Decision in this proceeding.¹

Pursuant to direction from the Board of Governors, the Postal Service has asked for expedition by this Commission in the handling of its rate change application inasmuch as the Board believes that "both the Postal Service and the mailers will benefit from the earliest possible determination of the effective date of the proposed rate and classification changes."

It should be initially noted that the Postal Service request for expedition does not seek a specific time period for the Commission to decide the case and reach a recommended decision, but the Postal Service suggests that, "If the Commission were to issue its recommendations no later than June 24, 2002, that would create

¹ "United States Postal Service Request for Expedition," September 24, 2001. Also, as it may be relevant to a Commission decision on the request for expedition, the OCA suggests a clarifying alteration to the proposed procedural schedule of the Presiding Officer (Ruling No. R2001-1/1). The OCA suggests that the completion of discovery as to certain witnesses and certain portions of the Postal Service's direct case, as discussed below, should be set for December 10 rather than the alternative November 26 date suggested by the Presiding Officer for a portion of the Postal Service's direct case.

significantly more time for advance planning and for a more orderly transition to the new rates and classifications." (Request at 3.) This open ended request is vague and essentially only a general suggestion to the Commission that it attempt to reach a decision as soon as it is able consistent with due process.

Given the short ten month statutory decisional period allowed for full hearings on rate proposals, the Postal Service knows well that there is very little opportunity to reduce the procedural period and yet provide the parties and the Commission a fair opportunity to review the case, obtain responsive interrogatory answers, prepare direct and rebuttal cases, adequately brief the issues, and prepare a careful and considered Commission recommendation. The OCA is confident that the Commission is always cognizant of the general desire on the part of all participants for a timely decision and that it, as well as the Presiding Officer, will make every attempt to expedite the procedures whenever possible. To this end the Presiding Officer proposed a procedural schedule² that at this time appears reasonable.

The Postal Service filed comments to the Presiding Officer's proposed procedural ruling on October 22 together with a proposed alternative procedural schedule.³ The comments include a proposed schedule that would result in reply briefs being filed three weeks earlier than proposed by the Presiding Officer and suggesting the Commission issue a recommended decision on June 24, only 53 days after the reply briefs are filed, rather than, as proposed by the Presiding Officer, on July 24, 62

² See note 1, *infra*.

³ "Comments of the United States Postal Service and Proposed Alternative Procedural Schedule," October 22, 2001.

days later than the filing date for reply briefs. The Postal Service alternative would be accomplished, in part, by moving the Presiding Officer's deadlines for discovery from November 26 and December 10 up to November 23. This is counter-productive. A longer period for interrogatories will enable the parties to ask more rounds of questions that could, therefore, shorten the time required for oral cross-examination. At the very least, the Presiding Officer's schedule provides for a longer period between the end of discovery and the start of hearings that will enable the parties to sharpen their cross-examination so that the total time for hearings can be significantly reduced.

Furthermore, all of the above assumes that there are no unplanned extraordinary delays for filing updated accounting information necessitating further review, *ab initio*, by the parties and the Commission. The Postal Service's comments do not even address this possibility. If the Commission sees a need to update the record to reflect the final results of the most recently completed fiscal year (FY 2001) as it did in Docket No. R2000-1, that would certainly prevent the Commission from reasonably planning to reach a decision in this proceeding within nine months. Also, the recent events of September 11 and the more recent anthrax problems indicate that the assumptions of the Postal Service based upon economic forecasts from the early summer may require additional time for procedures to consider updated information. At the least, further analysis may be required by the Postal Service to determine whether the impact of these events outdates its previous estimates upon which it bases its rate increases. The fallout from the events since September 11 may take a few weeks to develop before the longer-term impact of the situation is reasonably estimable. Although the current situation is very serious, the longer-term effects on mail volume, revenues and

costs may or may not be significant. Further data filings may be necessary to provide revised estimates that would require time for additional hearings.

The Postal Service cites only two instances, Docket No. R76-1 (nine and one-half months from filing to recommended decision) and R94-1 (eight and one-half months from filing to recommended decision) where the Commission was able to reach a recommended decision in only a very few weeks short of ten months. Thus, only once has the Commission decided a rate case in nine months or less (Docket No. R94-1) and that was a rate case in which a relatively straightforward across-the-board rate change was requested. Yet the Postal Service is requesting the Commission to meet an earlier deadline even though the revenue requirement shortfall anticipated in the application does not require extraordinary measures to meet an emergency. It should be noted that the Commission and the Presiding Officer in past cases have continually expedited the process to the maximum extent possible.

Given the ten-month statutory period allowed for a decision in these complex rate cases, the Commission must always work to expedite its procedural processes. Even if the Commission and the Presiding Officer made every effort to tighten the procedural schedule (undoubtedly to the detriment of those whose time periods are shortened) the total savings in the decisional process could certainly be no more than, and probably much less than, one month. Even without Commission acceleration of the procedural schedule, the Postal Service could achieve the early implementation of higher rates by establishing accelerated implementation procedures. The Postal Service merely suggests that the timing of new rate increases would be inconvenient if the rates must

become effective near the start of the heavy mailing season or if mailers do not have a full two months to prepare new software recognizing the new rates.

Also, it should be remembered that if rate increases are delayed, the Postal Service is not precluded from recovering at a later time whatever shortfall may be incurred because of the statutory mandate to break even in its operations.

The reasons cited by the Postal Service for expedition are themselves insufficient to warrant unusual expedition of the matter. They are that it would "help avoid disadvantages associated with certain implementation options and give the Board more practical flexibility in setting the effective date for the changes." (Request at 2) If ten months were required for a recommended decision, "less than two months would be left to accommodate an implementation date that conformed to the test year assumptions in the case. Otherwise, implementation would have to take place after the start of the fiscal test year (October 1), and the financial goals underlying the Postal Service's request could be substantially undermined by loss of expected revenue." (*Ibid.*) The Postal Service also notes an early decision would "facilitate an orderly transition to the new rates and classifications...." (*Ibid.*)

The reasons cited for expedition are virtually always present in any rate case. When the rhetoric is peeled away, the reasons are essentially that a deficit is projected for the test period and it is desirable (but not mandatory) that the rates become effective before the start of the test period. This filing is not in the nature of an emergency rate increase. The anticipated revenue shortfall, without the contingency or recovery for prior years losses, is well within the usual range of rate increase requests. The revenue shortfall projected for in FY 2002 (although the second interim year in this docket, it is

comparable to the test year in the last rate case) is \$1.350 billion (Exhibit USPS 6A) and in Docket No. R2000-1, the comparable year (the test year in that case) was a net loss of \$1.603 billion after final corrections (PRC Op. Docket. No. R2000-1, App. C). The higher shortfall in the FY 2003 test year in this case of \$2.45 billion reflects the use of a more future test year than in Docket No. R2000-1.

The Postal Service has the ability to determine when to file its case. The Commission, in ruling on requests to extend the ten-month decisional period in the last rate case, Docket No. R2000-1, noted,

The Postal Service is free to submit a request for a recommended decision at any time, and the law provides a ten month period for considering such a request that can only be extended if the Service causes delay by failure to comply with a Commission order. Therefore, the procedural schedule has been developed so as to allow the Commission an adequate opportunity to evaluate the evidence and arguments of all participants and issue a timely opinion and recommended decision.⁴

Also, the Presiding Officer in Docket No. R2000-1 noted in passing, "The ten-month deadline mandated for these proceedings strains the participants' and the Commission's resources."⁵

The Postal Service can calculate with reasonable certainty before it files for a rate change the likely effective date of proposed rate increases. The timing of the filing is totally within the control of the Postal Service. In this case, the Postal Service could

⁴ "Presiding Officer Ruling Establishing The Procedural Schedule," February 25, 2000 at 3.

⁵ "Presiding Officer's Ruling, Granting Waivers, in Part, and Clarifying Evidentiary Status of Category 2 Library References," Ruling No. R2000-1/13, March 14, 2000 at 9.

have filed earlier. It did not wait for year end data to become available for a later base year but instead chose to rely upon FY 2000 as the base year with two interim years, FY 2001 and FY 2002, and an FY 2003 test year.

The Postal Service points out that it is approaching its borrowing limit from the U. S. Treasury. That limit was set years ago. Given the growth in the size of the Postal Service since 1970, these limits are now outdated but the Postal Service has not demonstrated that it has approached Congress to bring up to date its financing restrictions which serve to hinder its growth prospects.

The request for expedition and proposed alternative procedural schedule amount to nothing more than a litigation strategy that serves two purposes. It would shorten the period for those who seek the opportunity for a full and fair consideration of the facts and issues; yet participants are entitled to the opportunity to prepare a case in opposition to the Postal Service case. Additionally, the request for expedition serves to enhance the perception that a rate increase is an immediate necessity. In fact, as noted above, the Postal Service has been fully aware of the time to process rate cases and the filing date was within its own control. The previous Commission rate proceeding in Docket No. R2000-1 was completed several months ago and the Postal Service certainly could have filed for a rate increase sooner. The Postal Service's request for expedition at this time would only serve to hurt other litigants in this case.

Because the filing date is within the Postal Service's control, it seems that if the Commission or the Presiding Officer, if he rules on this request, chooses to expedite a decision in this case, then the times that are shortened in the proceeding should be taken from the time periods that would otherwise be allotted to the Postal Service for

preparing its pleadings or its testimony and interrogatories. The Board of Governors could hardly object if the Postal Service staff must make an extra effort to meet the Board's resolution for expedition.

A review of the Presiding Officer's proposed schedule for excess amounts of time allotted to the Postal Service suggests that the evidentiary hearing on the cases-in-chief of intervenors and the OCA might be advanced by two weeks from March 18 to March 4. Also, another week might be shaved from the Postal Service's preparation time by advancing, by one week, the filing of evidence to the cases-in-chief of participants other than the Postal Service from the proposed April 15 date to March 25 (three weeks earlier if combined with the deletion of the above two weeks). In this way three weeks might be removed from the procedural schedule by primarily reducing the time allotted for the Postal Service filings. Unfortunately, this would also curtail significantly the time available for those participants who would file testimony against other participants.

Finally, as noted in footnote 1, *infra*, the OCA would like to comment on the Presiding Officer's procedural schedule proposing, without full explanation, a dichotomy in the dates for completion of discovery on portions of the Postal Service case: first on November 26 for one portion of its case and then on December 10 for "the remainder of the Postal Service's direct case" (the more complex testimony). The OCA believes that discovery relating to the testimony of certain of the Postal Service witnesses is significant and complex and should be allowed until December 10.

Specifically, the OCA requests that discovery be permitted until December 10 for the following Postal Service witnesses:

Tayman(T-6)
Bozzo (T-14)
Robinson (T-29)
Mayo (T-35, T-36)
Kingsley (T-39)

Van-Ty-Smith (T-13)
Moeller (T-28)
Scherer (T-30)
Karoma (T-37)
Cochrane (T-40)

For all the above reasons, the OCA recognizes the need to expedite procedures in this proceeding but opposes the Postal Service's request for expedition to the extent that it suggests a recommended decision within nine months. The OCA also requests that the last day of discovery for the above listed witnesses should be the latest date established for discovery of Postal Service witnesses.

Respectfully submitted,

OFFICE OF THE CONSUMER ADVOCATE



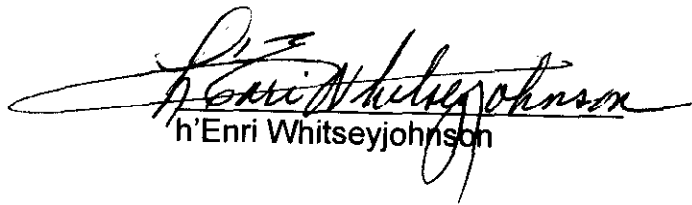
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CERTIFICATE OF SERVICE

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


h'Enri Whitseyjohnson

Washington, D.C. 20268-0001
October 24, 2001