

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

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POSTAL RATE AND FEE CHANGES

Docket No. R2001-1

AMERICAN POSTAL WORKERS UNION, AFL-CIO
INITIAL REPLY TO MOTION OF THE UNITED STATES POSTAL SERVICE
FOR THE ESTABLISHMENT OF A PROCEDURAL MECHANISM AND SCHEDULE
GOVERNING FURTHER PROCEEDINGS IN LIGHT OF THE SETTLEMENT
AND SUGGESTIONS FOR PROCEDURAL MECHANISMS AND SCHEDULES
(January 24, 2002)

Pursuant to Rulings No. R2001-1/27 and R2001-1/30, the American Postal Workers Union, AFL-CIO ("APWU") hereby files its Initial Reply to the January 22, 2002 Motion of the United States Postal Service for the Establishment of a Procedural Mechanism and Schedule Governing Further Proceedings in Light of Settlement and its Suggestions for Procedural Mechanisms and Schedules.

The APWU is concerned with the need to provide due process to fully consider the arguments it and other parties will raise in this proceeding. Toward this end, the APWU believes that sufficient time needs to be built into the schedule and appropriate procedural mechanisms need to be developed to ensure full and adequate development of the issues.

The APWU will file its testimony on January 30, 2002, in accordance with the initial procedural schedule and Rulings No. R2001-1/27 and R2001-1/30. The Postal Service does not propose a different date for the APWU's initial filing.

Once the APWU files testimony, the Postal Service and other parties will be free to file written cross-examination directed to the testimony. Under the Commissions Rules of Practice, 39 CFR §3001.26, the participant responding to interrogatories has fourteen days from the date of

service to respond or ten days to file objections. The time to answer interrogatories was shortened from twenty days in 2000. 65 FR 6536, 6541 (Feb. 10, 2000). Five days to answer interrogatories and three days to file objections, as proposed by the Postal Service, is unworkable. The APWU is willing to see some shortening of the response time if other changes are made to the rules concerning interrogatories. The APWU will be the only party subject to interrogatories during this period and if there are a significant number of interrogatories, responding to all of them within five days of filing would not permit the APWU to adequately answer.

To facilitate speedy responses to interrogatories, the APWU suggests that the rules provide

- that all interrogatories directed to the APWU be attached as WordPerfect or Word documents and e-mailed to counsel at scatler@odsalaw.com and kkobe@jpcecon.com.
- that the APWU can respond to parties who serve interrogatories by e-mailing the answers in the same format in addition to filing them with the Commission, and
- that the APWU will only have to serve answers to interrogatories on those parties who file with the Commission an indication that they wish to receive these answers and may serve them by mail or e-mail, whichever is desired by the recipient.

The APWU believes that if these suggestions are incorporated in the rules, ten days to serve a response or file an objection from the date of service of the interrogatories would be workable.

If the APWU is to be able to respond to written interrogatories before the hearings on its testimony, sufficient time must be built into the schedule to permit parties to serve interrogatories and for the APWU to respond before the hearings. The Postal Service proposes a deadline of February 8, 2002 for filing written discovery and notices of intent to conduct oral cross-

examination on any APWU direct testimony and hearings on APWU direct testimony on February 12, 2002. These dates do not provide time for the APWU to respond before the hearing. The time between the deadline for filing of written discovery and the hearing must be extended, either by moving the deadline for filing of written discovery back or moving the hearing forward. The APWU proposes keeping the deadline for filing written discovery on February 8, 2002, but not having the hearings any earlier than February 19, 2001.

The next deadlines relate to rebuttal testimony. It does make sense to have a deadline shortly after the completion of the APWU's oral testimony for other parties, including the Postal Service, to file notice of intent to file rebuttal testimony. The Postal Service has proposed two days after the completion of the APWU's testimony. The APWU believes that two days after the APWU's testimony is concluded is not unreasonable, though the date proposed, February 14, should be adjusted to accommodate a later date for the hearing on the APWU's testimony. If, for example the beginning of the hearing on the APWU's testimony is scheduled for February 20, the date for filing a notice of intent to file rebuttal testimony would be February 22, 2002. The Postal Service has proposed having rebuttal testimony filed five days after notice. The APWU does not have any objection to that time period. Continuing the same example, the rebuttal testimony would be due five days later, on February 27, 2002.

The Postal Service proposes having the hearing on the rebuttal testimony six days after that testimony is filed. This is unacceptable because it does not provide time for written cross-examination. While normally there is no written cross-examination of rebuttal witnesses, these witnesses of parties other than the Postal Service are not true rebuttal witnesses. Their testimony would normally have been presented in case-in-chief of intervenors and would have been subject

to written cross-examination. Delaying their testimony until after the APWU testifies should not deprive the APWU of the right to fully explore their testimony, which will likely require written cross-examination. To give the APWU a comparable opportunity to cross-examine the other intervenor's case-in-chief witnesses, the APWU should have seven work days to prepare and file written interrogatories and the other parties should have ten days to respond. Accordingly, the deadline for the APWU filing written cross-examination should be March 8, 2002 and the first possible day of hearing should be March 19, 2002. Similar rules to the ones proposed by the APWU for interrogatories directed to the APWU would be appropriate.

The Commission's rules provide that "There will be an opportunity for participants to rebut presentations of other participants and for the initial proponent to present surrebuttal evidence." 39 CFR §3001.30(e)(1). Because the APWU will be the only party testifying in the initial round of party testimony, the schedule proposed by the Postal Service does not provide for the APWU to rebut the presentations of other participants. Usually any other party intervenors who were interested in the issues that concern the APWU would file their testimony at the same time as the APWU. In this case, however, those intervenors will be filing testimony after the APWU's testimony, if they file at all. Consequently, in order to provide the APWU an opportunity to rebut presentations of other participants, as required by the Commission's rules, time must be included for the APWU to determine whether to file rebuttal testimony to the testimony of other participants and then to file and defend that testimony. The APWU proposes that it would have two days after the close of the other participant's testimony to file notice of intent to file rebuttal testimony and that rebuttal testimony would be due five days later. If the testimony of the other intervenors concludes on March 20, 2002, the APWU would have to file

notice concerning rebuttal testimony on or before March 22, 2002 and would have to file any rebuttal testimony on or before March 27, 2002. Hearings could then be held on any APWU rebuttal testimony on April 2, 2002.

The Postal Service proposed filing initial briefs three days after the final hearings on rebuttal testimony and reply briefs three days after that. The APWU proposes to have the initial briefs due on April 8, 2002, with the reply briefs due April 13, 2002. Of course, should the APWU or the other intervenors not file testimony or rebuttal testimony, the Commission could adjust the schedule and have briefs and reply briefs due earlier.

The APWU is aware that the Postal Service and the parties to the Settlement Agreement are anxious to conclude the hearings so that it is possible for a decision to be issued in time for new rates to go into effect July 1, 2002. However, the due process rights of the APWU as a participant in this case require that adequate time be allowed to fully develop the record on the issues of concern to the APWU to permit full consideration of those issues.

Respectfully submitted,

AMERICAN POSTAL WORKERS UNION, AFL-CIO
by its attorneys:


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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.

Date: January 24, 2002


Susan L. Catler