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PRESIDING OFFICER'S
RULING NO. R2001-1/43

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

Postal Rate and Fee Changes

Docket No. R2001-1

PRESIDING OFFICER'S RULING
ESTABLISHING THE PROCEDURAL SCHEDULE
FOR CONSIDERATION OF THE PROPOSED
STIPULATION AND AGREEMENT

(Issued January 31, 2002)

On December 17, 2001 the Postal Service submitted a proposed stipulation and agreement in settlement of all issues in this case. That stipulation has been amended twice, on December 26, 2001 and January 17, 2002. Currently 56 participants (out of 62) are signatories to the revised stipulation.¹

Presiding Officer's Ruling No. R2001-1/27 noticed the proposed stipulation and agreement and established procedures for participants to indicate opposition to any or all parts of the stipulation. Only one participant, the American Postal Workers Union, AFL-CIO (APWU) has indicated opposition. APWU stated that it opposed "the rate design proposed for First-Class Mail because the proposed discounts exceed cost-avoided." Notice of Opposition of the American Postal Workers Union, AFL-CIO, January 15, 2002, at 1.

Pursuant to P.O. Ruling R2001-1/27, as revised by P.O. Ruling R2001-1/30, a number of participants filed proposed procedural mechanisms and schedules on

¹ Notice of the United States Postal Service Deferring Proposal of Alternative Procedures, January 25, 2002 at 2, n. 1.

January 22, 2002,² and responses were filed on January 28, 2002.³ On January 30, 2002, APWU submitted APWU-T-1, testimony of Michael J. Riley in opposition to the proposed stipulation and agreement.

The schedule for evaluating the proposed stipulation and agreement and the opposition to the proposed settlement set out below has been developed with two important considerations in mind. First and most important, the proposed stipulation and agreement must be evaluated quickly enough so that if it will not serve as a sound basis for a recommended decision to the Governors, the Commission can proceed to evaluate the Postal Service Request in this docket and provide a decision consistent with the time limit established in 39 U.S.C. § 3624.⁴ Second, the proposed stipulation provides that signatories may withdraw if the Commission fails to issue a recommended decision based on the stipulation and agreement by March 25, 2002.

Both of these considerations argue for maximum expedition. The participants commenting on potential procedural mechanisms recognize this, and suggest extremely

² American Bankers Association and National Association of Presort Mailers Joint Comments on Procedural Mechanisms and Schedules, January 22, 2002; Joint Comments of KeySpan Energy and Major Mailers Association in Support of the Postal Service's Proposed Procedural Schedule, 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, January 22, 2002. An 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 was filed on January 24, 2002, together with a request that it be accepted as timely. The APWU filing is accepted.

³ Joint Reply of Major Mailers Association, American Bankers Association, and National Association of Presort Mailers Opposing Procedural Mechanisms and Schedule Proposed by APWU (MMA et al. Reply), January 28, 2002; Office of the Consumer Advocate Response to Motion of the Postal Service for the Establishment of a Procedural Mechanism and Schedule Governing Further Proceedings in Light of Settlement, January 28, 2002; Postcom Comments and Support of "Motion of the United States Postal Service for the Establishment of a Procedural Mechanism and Schedule Governing Further Proceedings in Light of Settlement, January 28, 2002;" and Comments of the United States Postal Service in Reply to Suggestions of American Postal Workers Union for Procedural Mechanisms and Schedules (Postal Service Reply), January 28, 2002.

⁴ The Postal Service failure to comply with P.O. Ruling R2001-1/27 by submitting proposed procedural mechanisms and a schedule for updating its presentation to reflect its best estimate of test year revenue requirements may eventually be shown to be a cause of delay in completing that task should the proposed stipulation and agreement be withdrawn or proved to be unacceptable. Evaluation of that question can wait until events prove such steps necessary.

tight deadlines. The Postal Service suggests a schedule with reply briefs being filed on March 4, 2002, three weeks before March 25, 2002.⁵ The schedule suggested by APWU calls for reply briefs on April 13, 2002, some forty days after the date suggested by the Postal Service. The schedule that follows accepts participants' suggestions so long as they do not encroach upon the due process rights of other participants.

Discovery and hearings on APWU testimony. The Postal Service suggests that discovery on APWU testimony be permissible until February 8, 2002, and that APWU be given five days to respond to questions and three days to object. APWU argues that ten days should be allowed for responses and objections.

The MMA et al. Reply reiterates the importance of speedy Commission action and suggests that the schedule proposed by APWU would extend Commission consideration too much. It suggests that if necessary, the time for discovery on the APWU testimony should be reduced to accommodate a timely recommended decision. The Postal Service Reply also criticizes the APWU suggestion and states that it contemplates committing all necessary resources to speedily evaluate the APWU submission.

Discovery on APWU will be permitted through February 7, 2002. APWU is to provide responses or objections within seven days. Written discovery is particularly useful for clarifying methodologies and identifying sources of inputs to complex testimony. Written discovery of the APWU testimony will facilitate understanding of that material and should reduce the need for extensive oral cross-examination of the sponsoring witness. If witness Riley is inundated with so much written discovery that answers cannot be produced within seven days, responses can be presented orally at hearing, or with the agreement of questioning counsel, in writing at a later date.

APWU has provided notice that witness Riley is unavailable for oral cross-examination before 1:00 p.m. on February 14, 2002. Hearings to receive the testimony

⁵ P.O. Ruling R2001-1/27, at 8, stated that proposed schedules should provide three weeks for the drafting and printing of a recommended decision.

of witness Riley will begin at 1:00 p.m. on February 14, 2002, and extend, if necessary, through February 15, 2002.

Surrebuttal testimony. The proposed stipulation and agreement is offered as a settlement in substitution for the Postal Service request in this case. APWU is the only participant that has chosen to file testimony in opposition to any aspect to the stipulation and agreement. As such, its testimony is in rebuttal to the proposal offered as a settlement in this case. Under Commission practice, and consistent with Administrative Procedures Act, proponents have the opportunity to file surrebuttal testimony. Participants intending to submit surrebuttal testimony are to provide notice to that effect by close of business, February 15, 2002. Surrebuttal testimony will be due on February 20, 2002.

APWU recognizes that normal Commission practice does not provide for written discovery on surrebuttal testimony. However, APWU suggests that the testimony filed in response to its opposition to the proposed settlement should be characterized as the case-in-chief of intervenors supporting the proposed stipulation and agreement. From this, APWU concludes that it should be allowed written discovery on this testimony, and the opportunity to file an additional round of testimony to rebut contentions made therein. The APWU argument on this point is unpersuasive. The testimony to be filed on February 20, 2002 will be limited to challenging propositions put forward in APWU-T-1. It cannot be characterized fairly as the case-in-chief of any participant.

The interim between the filing of surrebuttal testimony and the hearing to entertain cross-examination of that testimony is six days, the amount of time suggested by both Postal Service and APWU. The hearing to receive surrebuttal testimony will take place on February 26, 2002.

Briefs. The Postal Service suggests that initial briefs be due three days after the date for the hearing to receive surrebuttal testimony. It proposes that reply briefs be due four days later. APWU proposes that initial briefs be filed six days after the hearing

to receive surrebuttal testimony, with reply briefs four working days later.⁶ Initial briefs in this case will be due on March 4, 2002, four working days after the hearing to receive surrebuttal testimony. Reply briefs will be due four working days later, on March 8, 2002.

Other procedural issues. APWU suggests that special rules be adopted that would provide that interrogatories and answers be exchanged via email. It further requests that a special rule govern service of discovery responses. Considering the tight schedule adopted in this ruling, it is reasonable to require that any participant that files discovery on APWU transmit copies of its questions via email as requested. Nonetheless, any participant that is unable to transmit its discovery to APWU via email may serve its questions in the normal manner accompanied by a statement explaining why it had to do so.

The Postal Service objects to the APWU suggestions that would alter current procedures for service of discovery responses. It contends that parties are entitled to notice when their interests may be affected, and since most participants are signatories to the proposed settlement, discovery responses should be provided without special request.

I commend APWU for offering to provide discovery responses via email. This practice should assist opposing counsel to prepare focused cross-examination. I urge APWU to follow this practice, however, in light of the concerns expressed by the Postal Service, I will not impose the provisions limiting service of discovery responses suggested by APWU. I will allow APWU to provide its responses by email to any participant that indicates it is willing to forego receipt of hard copy service.

⁶ The date suggested by APWU is April 13, 2002, a Saturday.

RULING

The procedural schedule in this case is amended as shown in the Attachment to this ruling.


George Qmas
Presiding Officer

PROCEDURAL SCHEDULE
POSTAL RATE AND FEE CHANGES
DOCKET NO. R2001-1

January 30, 2002	Filing of evidence in opposition to the proposed stipulation and agreement.
February 7, 2002	Completion of discovery on evidence in opposition to the proposed stipulation and agreement
February 14-15, 2002	Evidentiary hearings on evidence in opposition to the proposed stipulation and agreement (1:00 p.m. in the Commission hearing room)
February 20, 2002	Filing of surrebuttal evidence rebutting opposition to the proposed stipulation and agreement (no discovery permitted on this surrebuttal evidence; only oral cross-examination)
February 26, 2002	Hearings on surrebuttal evidence (9:30 a.m. in the Commission hearing room)
March 4, 2002	Filing of initial briefs concerning proposed stipulation and agreement
March 8, 2002	Filing of reply briefs concerning proposed stipulation and agreement