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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. R2001-1/44

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

Postal Rate and Fee Changes

Docket No. R2001-1

PRESIDING OFFICER'S RULING
SUSPENDING OUTSTANDING DISCOVERY
DIRECTED TO THE POSTAL SERVICE

(Issued January 31, 2002)

The Postal Service moves for suspension of all discovery addressed to it, including both outstanding interrogatories as well as prospective inquiries, that are unrelated to opposition to the pending Stipulation and Agreement (Settlement) by the American Postal Workers Union, AFL-CIO (APWU).¹ The Postal Service advances several reasons in support of its motion. First, it argues that the Settlement and the limited opposition to it serve to substantially narrow the issues before the Commission. *Id.* at 4-5. Second, it contends that since only one party opposes the Settlement, discovery directed to the Postal Service by the remaining participants, all of whom either support or do not oppose it, on issues unrelated to the opposition is counterproductive. *Id.* at 5. In addition, the Postal Service acknowledges that suspension may be temporary since it could unravel. It concludes, however, that if the Settlement remains intact, the discovery "might ultimately be moot." *Id.* at 6.²

The Office of Consumer Advocate (OCA), which opposes the request, takes the position that timely interrogatories initially asked to develop its direct case should be

¹ 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 at 5 (Postal Service Motion).

² The Postal Service complains that the Commission has imposed some of the demands on it. Postal Service Motion at 5. The Commission's responsibility to examine the Settlement and related issues for consistency with the statute may require further Presiding Officer Information Requests be issued. This Ruling does not foreclose that possibility.

fully answered.³ The OCA's opposition has two prongs. First, citing the "legal principle" that issues likely to recur in future litigation involving the same parties "are not rendered moot by their resolution in a given proceeding," the OCA argues that "fairness and administrative efficiency" require that discovery "relevant to *any* omnibus rate proceedings should not be prematurely foreclosed." *Ibid.* (emphasis in original). Second, the OCA characterizes the Postal Service's motion as a "blanket objection," which it implies is inappropriate and untimely under the Commission's Rules. *Id.* at 4.

Discussion. The motion is granted. Discovery addressed to the Postal Service serves two complementary functions: (a) to learn the details of the Postal Service's case, and (b) to ascertain facts to be used to develop participants' evidence. The Settlement is supported or not opposed by all but one party.⁴ Assuming the Settlement remains viable, the effect of this is that each participant, save APWU, waived its right to submit a direct case in response to the Postal Service's filing.⁵ Under the circumstances, continuing discovery of the Postal Service is largely unnecessary.

The Commission has before it the Settlement and APWU's opposition to it. To the extent that the outstanding discovery is unrelated to both, requiring the Postal Service to respond while the Settlement is pending would serve no legitimate purpose. Such data, even if produced, will not be entered into the record. Rather, continuing discovery would simply cause the Postal Service to expend resources needlessly.⁶

Under these circumstances, continuing discovery would be contrary to the Commission's Rules. Discovery is permissible when "reasonably calculated to lead to

³ 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 at 3 (OCA Response).

⁴ Pursuant P.O. Ruling R2001-1/30, any participant opposing the Settlement was required to file a Notice of Opposition with the Commission by January 16, 2002. Only the APWU filed such a notice. According to the Postal Service, 56 out of 62 participants are signatories to the Settlement. See Notice of United States Postal Service Deferring Proposal of Alternative Procedures, January 25, 2002 at 2, n.1.

⁵ Consistent with the Settlement and P.O. Ruling R2001-1/30, only APWU, which engaged in no discovery of the Postal Service, filed a direct case.

⁶ To the extent that motions practice ensued, the administrative burden on participants and the Commission would be compounded.

admissible evidence during a noticed proceeding.” 39 C.F.R. § 3001.25(a). Under the current procedural schedule, the outstanding discovery does not satisfy that standard.

The OCA cites *National Association of Greeting Card Publishers v. United States Postal Service*, 462 U.S. 810 (1982) (*NAGCP*) for the proposition that issues likely to recur in future cases involving the same parties “are not rendered moot by their resolution in a given proceeding.”⁷ The OCA’s reliance on *NAGCP* is misplaced. The “capable of repetition, yet evading review”⁸ exception to mootness is inapplicable here. While that exception pertains to matters subject to judicial review, the OCA has not shown that it applies to discovery disputes procedurally overtaken by subsequent events. Nor, for that matter, is it inevitable that any outstanding discovery disputes “are certain to be central to future proceedings.”⁹

The OCA argues that its discovery is not moot because the data sought, like information on quality of service, are relevant and “may recur in future omnibus rate proceedings.” OCA Response at 3. Such discovery should not, according to the OCA, be “prematurely foreclosed.” *Ibid.* Suspension does not entail “prematurely foreclosur[ing]” discovery. It simply recognizes that the Settlement, which the OCA supports, obviates the need for continued discovery, provided it remains pending before the Commission. Moreover, the OCA’s argument that discovery should continue based on the assumption that information currently sought would be relevant, if it recurred, in “any” future omnibus rate proceeding is unfounded. Speculation about what might be relevant in future cases is immaterial to issues in this docket. This is not intended to pass judgment on the merits of any outstanding interrogatory. The broad issues

⁷ OCA Response at 3. The specific language cited is: “The questions before the Court are certain to be central to future proceedings, and there is more than a ‘reasonable expectation’ that petitioners, who have taken part in most or all of the challenges to prior rate schedules, will be affected by these future proceedings.” *Ibid.*, citing *NAGCP* at 820, n. 14

⁸ See, e.g., *Nebraska Press Association v. Stuart*, 427 U.S. 39, 546 (1976), and *Sosna v. Iowa*, 419 U.S. 393, 397-403 (1975).

⁹ In *NAGCP*, the Court was addressing the appropriate ratemaking standard for the attribution and assignment of costs under the Act. It reviewed the matter because of inconsistencies between the Second and District of Columbia Circuits. *NAGCP* at 820. Plainly, that issue would remain central to future proceedings until resolved judicially. The same cannot be said of discovery requests, which seek to develop facts related to a specific case and issues.

referred to by the OCA, *e.g.*, the effects of a high or low quality of service on cost coverage, are recurring themes in rate cases. But that occasions no need to continue discovery in this proceeding. The analyses of those issues are fact-specific based on the record developed at that time.

Suspending discovery while the Settlement is pending works no hardship on those who support or do not oppose the Settlement. In future proceedings, discovery will be available to those participants.

Finally, the OCA's attempt to recast the Postal Service's motion as an untimely blanket objection is unavailing. See OCA Response at 4. The Commission's discovery rules are inapplicable to the Postal Service's motion. The Postal Service has moved for a suspension of the process; it has not objected to specific discovery requests.

Accordingly, the Postal Service is relieved of the obligation to respond to all outstanding discovery requests that are unrelated to APWU's opposition to the Settlement as long as the Settlement remains pending before the Commission for a recommended decision. If support for the Settlement is withdrawn so that it no longer represents a reasonable basis on which to resolve issues in this proceeding, or if the Postal Service withdraws from it, the Postal Service shall promptly advise the Commission and, within ten days thereafter, provide its responses to all outstanding discovery requests.¹⁰

¹⁰ Within the sooner of seven days of the date of this Ruling or the date it files to withdraw from the settlement, the Postal Service shall file a listing of all outstanding discovery directed to it.

RULING

1. The Postal Service's request, as set forth in the Motion of the United States Postal Service for the Establishment of a Procedural Mechanism and Schedule Governing Further Proceedings in Light of Settlement, filed January 22, 2002, that all pending and related follow-up discovery addressed to it be suspended is granted as detailed in this Ruling.

2. Within the sooner of seven days of the date of this Ruling or the date it files to withdraw from the settlement, the Postal Service shall file a listing of all outstanding discovery directed to it.


George Omas
Presiding Officer