

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

Rules Applicable to Renew or Modify
Previously Recommended Negotiated
Service Agreements

Docket No. RM2005-3

INITIAL COMMENTS OF THE UNITED STATES POSTAL SERVICE
(March 14, 2005)

On February 10, 2005, the Postal Rate Commission issued Order No. 1430, in which it solicited comments in regard to proposed rules that it intends to utilize in proceedings where it considers Postal Service requests to extend the duration of previously recommended and currently in effect negotiated service agreements ("NSAs"), 29 C.F.R. § 3001.197, and Postal Service requests to make modifications to previously recommended and currently in effect NSAs, 39 C.F.R. § 3001.198. Initial comments by interested persons are due today.¹

Preliminarily, the Commission stated that it assumes that in order to proceed under either proposed rule, modifications will have to be non-controversial, and not materially alter the nature of an existing agreement. PRC Order No. 1430 at 2. The Commission stated that this circumstance will be necessary "if the Commission is to

¹ PRC Order No. 1430, Docket No. RM2005-3 (February 10, 2005).

provide expedited review and rapid action in issuing recommendations on such requests. PRC Order No. 1430 at 2.

The Postal Service is appreciative of the Commission's efforts in drafting these new rules, and believes that, in general, they will form an adequate framework for at least the initial instances in which such requests will be filed. The Postal Service agrees with the Commission that expedition is an important goal, and shares the Commission's hope that initial decisions will issue soon after a prehearing conference. PRC Order No. 1430 at 3. The Postal Service does not believe, however, that modifications will always need to be "non-controversial" in order to proceed under the proposed rules, but rather that the rules are flexible enough for the Commission to resolve controversies over changes that do "not materially alter the nature of the existing agreement." See 39 C.F.R. § 3001.197(a).

The Postal Service strongly supports the Commission's statements and draft provisions, Rules 197(c) and 198(c), that participants will need to present any arguments concerning whether it is appropriate to proceed under these rules before or during the prehearing conference. PRC Order No. 1430 at 3, 6. This requirement is essential to expedited proceedings, and not unreasonable under the circumstances of these types of requests.

The Postal Service believes, however, that a few changes, discussed below, would improve the procedures under the proposed rules.

In furtherance of the important objective of expedition, the Postal Service requests that the Commission add language to proposed Rules 197(c) and 198(c), to

provide that when the Commission decides to proceed under either rule (as opposed to proceeding under Rule 195 or Rule 196), "a schedule will be established which allows a recommended decision to be issued not more than 60 days after the determination is made to proceed under § 3001.197 [or 3001.198]." This addition would be similar to language in § 196(d)(1), which the Postal Service believes was quite helpful in expediting the proceedings in Docket Nos. MC2004-3 and MC2002-4. Such language would leave the Commission with the flexibility needed to take a longer time, if circumstances so warrant.

The Postal Service also urges the Commission to make changes to the conclusions of sections 197(c) and 198(c), both of which currently provide that "the docket will proceed under § 3001.195" if the Commission determines that the docket should not proceed under § 3001.197 or §3001.198. Because there may be instances where proceeding under § 3001.196 would be appropriate, the Postal Service suggests the following language be added to both sections: "or § 3001.196, as determined in the Commission's decision."

The Postal Service further believes that in sections 197(a)(4) and 198(a)(4), both of which call for "[a]ll studies developing information pertinent to the request completed since the recommendation of the existing agreement," the reference to "studies" should be changed to "special studies." This change would conform to language in § 3001.196(4), which the Postal Service believes is a direct analog, and avoid problems with vagueness and potential overbreadth.

Finally, the Postal Service would like to recommend the addition of two modifications to § 3001.198(a)(3). The first proposed modification is to allow the Postal Service to present a "rationale for revising the schedule of rates or fees" when it seeks a modification. There will be cases where a modification would require such a revision, such as a request to modify a cap. The second proposed modification is to add the phrase "since the recommendation of the existing agreement" after "intervening event," which would clarify when an intervening event must occur, and do so in a manner that is consistent with language in § 3001.197(a)(3).

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux
Chief Counsel
Ratemaking

Brian M. Reimer
Nan McKenzie

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-3037/ Fax: -5402
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CERTIFICATE OF SERVICE

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

Brian M. Reimer

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
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