

ORDER NO. 1465

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

Before Commissioners: George Omas, Chairman;
Dawn A. Tisdale, Vice Chairman;
Ruth Y. Goldway; and
Tony Hammond

Complaint on Stamped Stationery

Docket No. C2004-3

ORDER DENYING MOTION TO SUSPEND PROCEEDING
AND ESTABLISHING BRIEFING SCHEDULE

(May 18, 2006)

The Postal Service moves to suspend this proceeding pending conclusion of litigation in Docket No. R2006-1.¹ It claims that suspension will benefit participants and that delay will cause no harm. Participants dispute both claims. The motion is denied.

Response to Order No. 1460. In Order No. 1460, the Commission denied the Postal Service's motion to dismiss the complaint filed in this proceeding and afforded participants an opportunity to address the question of whether or not genuine issues of material fact are presented in this case. PRC Order No. 1460, Docket No. C2004-3, April 13, 2006. Two participants, the Complainant, Douglas F. Carlson, and the Office of the Consumer Advocate (OCA), submitted statements.² Both contend that no genuine issues of material fact remain on the jurisdictional question of whether stamped

¹ Reply of United States Postal Service to Statements as to Material Facts Filed Pursuant to Order No. 1460 and Motion to Suspend the Proceeding, May 4, 2006 (Postal Service Motion).

² Douglas F. Carlson Response to Order No. 1460, April 27, 2006; Office of Consumer Advocate Statement as to Issues of Material Fact, April 27, 2006 (OCA Statement).

stationery is a postal service.³ In addition, OCA states that the Commission may take notice that the Postal Service is selling another stamped stationery product, “Garden Bouquet Stationery,” that in all relevant respects is identical to the Disney stamped stationery.⁴

Two participants filed replies. OCA expands on Popkin’s allegation that Disney stamped stationery includes 12 two-cent stamps, suggesting that the Commission may take official notice of the additional facts.⁵ Based on recent purchases of stamped stationery, OCA corroborates that the Disney stamped stationery packet has been updated to include additional postage. It notes, however, that although the Garden Boutique stationery it purchased did not include the additional postage, both products sell for the same price, \$14.95. *Id.* at 2.

The Postal Service combined its reply with a motion to suspend the proceeding.⁶ It characterizes OCA’s and Popkin’s pleadings as suggesting legal conclusions based on new allegations. Prior to the receipt of these pleadings, the Postal Service believed that no material issues of fact were outstanding. While it takes no position on whether these pleadings have changed that situation, the Postal Service contends that the record is such that the participants should be afforded an opportunity to brief the Commission before it makes any determination on the legal issues raised by the Complaint. *Id.* at 2.

The motion to suspend and opposition to it. Citing its recent omnibus rate filing and other matters pending before the Commission, the Postal Service moves to

³ On April 28, 2006, David B. Popkin (Popkin) submitted what is styled as a response to Order No. 1460 in which he reports, citing the Summer 2006 issue of *USA Philatelic*, that Postal Service now includes 12 two-cent stamps in the Art of Disney stamped stationery packets to facilitate mailing at current rates. David B. Popkin Response to Order No. 1460, April 28, 2006. Mr. Popkin also submitted a motion for late acceptance of his response. David B. Popkin Motion for Late Acceptance of Response to Order No. 1460. While Popkin’s pleading is not specifically responsive to Order No. 1460, his motion will, nonetheless, be granted, since the subject is relevant to matters under consideration in this proceeding and, in any event, could be raised on brief.

⁴ OCA Statement at 1-2.

⁵ Office of Consumer Advocate Reply to Statement in Response to Commission Order No. 1460, May 4, 2006.

⁶ Postal Service Motion, *supra*.

suspend this proceeding pending litigation in the rate case. It contends that suspension would be beneficial to the participants and the Commission. Furthermore, it argues that the delay would be harmless “since no stamped stationery issuances at current First-Class Mail rates are planned.” *Ibid.*

Douglas Carlson and OCA oppose the Postal Service’s motion. Carlson takes exception to the Postal Service’s suggestion that delay would be beneficial to participants, noting that it neither identifies any such participants nor offers any reason why suspension would be beneficial.⁷ Carlson also argues that delay would prolong “the ongoing harm to the public” caused by the continuing sale of stamped stationery “at inflated prices.” *Id.* at 1.

OCA rejects the Postal Service’s claim that suspension benefits participants, expressing concern that the general public is harmed by having to pay “inappropriately high prices for stamped stationery[.]”⁸ OCA also contests the Postal Service’s contention that delay would be harmless since no stamped stationery issuances are planned at current rates. It argues that deferral pending litigation of Docket No. R2006-1 would not provide sufficient time for resolution in this proceeding “before the possible introduction of newly designed postal stationery.” *Id.* at 3.

Asserting that there are no remaining issues of material fact, OCA maintains that briefs are unnecessary. *Id.* at 1, 4. In lieu of deferral, OCA urges the Commission to resolve the jurisdictional issue in timely fashion so that, assuming stamped stationery is found to be a postal service, this proceeding may be consolidated with Docket No. 2006-1. *Id.* at 4.

Discussion. The Postal Service’s rationale for suspension is not convincing. It offers no credible explanation why suspension benefits participants. Nor can any be

⁷ Douglas F. Carlson Answer in Opposition to Postal Service Motion to Suspend Proceeding, May 5, 2005 (Carlson Answer).

⁸ Office of Consumer Advocate Reply in Opposition to Motion of United States Postal Service to Suspend the Proceeding, May 10, 2005, at 2.

reasonably inferred.⁹ If stamped stationery is found to be a postal service, suspension compounds the harm occasioned by the introduction of a product without first being subject to procedures mandated by the Postal Reorganization Act. The process is not unimportant.

No participant contends that material issues of fact are present which require a hearing. The Commission agrees and, thus, no hearing will be held in this proceeding.

In Order No. 1460, the Commission indicated that it would establish a briefing schedule if no material issues of fact remain. OCA believes that briefs are unnecessary. The Complainant is silent on the point. The Postal Service argues that it would be appropriate to provide participants the opportunity to brief the issues, suggesting that new allegations may have muddled the record. The Commission concludes that, since this is a case of first impression, participants should be given an opportunity to brief the issues raised by the Complaint. Initial briefs are due June 8, 2006, with reply briefs due no later than June 22, 2006.

Affording that opportunity should not appreciably delay resolution of the threshold legal issue or place extraordinary demands on participants. Moreover, it will provide participants an opportunity to address issues thoroughly, including a chance to respond to opposing views.

⁹ The Postal Service mentions its rate filing and other, but unspecified, matters pending before the Commission as supporting its belief that suspension would be beneficial to participants. The Complainant refutes the claim, noting, among other things, that the Postal Service did not consult him regarding the benefits of suspension. Carlson Answer at 2.

It is ordered:

1. The Postal Service's motion to suspend the proceeding, filed May 4, 2006, is denied.
2. Initial briefs are due no later than June 8, 2006.
3. Reply briefs are due no later than June 22, 2006.
4. The David B. Popkin Motion for Late Acceptance of Response to Order No. 1460, filed April 28, 2006, is granted.

By the Commission
(SEAL)

Steven W. Williams
Secretary