

DOCKET SECTION

ORDER NO. 1202

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION

Before Commissioners:

Edward J. Gleiman, Chairman;
George W. Haley, Vice Chairman;
W.H. "Trey" LeBlanc, III;
H. Edward Quick, Jr., and George A. Omas

Postal Rate and Fee Changes

Docket No. R97-1

ORDER DENYING RECONSIDERATION OF COMMISSION ORDER NO. 1201

(November 12, 1997)

Presiding Officer's Ruling R97-1/58 (issued November 10, 1997) certified to the Commission a Motion of United States Postal Service for Reconsideration of Presiding Officer's Ruling No. R97-1/54, and, if Necessary Postal Rate Commission Order No. 1201 (Motion), filed November 7, 1997. Certification is accepted. Reconsideration is denied.

The Motion recognizes that Order No. 1201 allows the Postal Service to supplement its direct case, and that the procedural schedule had to be adjusted to allow additional periods for discovery and cross-examination as a result of that action. The Postal Service contends that (a) to the extent it is at all responsible for events which sparked this controversy, its actions were reasonable in light of past practice; (b) the Presiding Officer may have implemented schedule revisions which are inappropriate in reaction to the Commission finding that the Postal Service is the proximate cause of delay; and (c) the schedule provides intervenors and the Office of the Consumer Advocate with an unreasonably long period to prepare their case-in-chief, including rebuttal to the Postal Service.

Postal Service responsibility. The majority of the Postal Service pleading is focused on whether it should be “blamed” for the events which have resulted in revisions to the procedural schedule in this case. Its primary concern appears to be that any “technical failure to comply with particular filing requirements established by [Commission] rule, even if it had occurred, would not be sufficient to trigger § 3624(c)(2).” Motion at 23. It seeks schedule adjustments intended to lessen the potential that the Commission might be unable to issue a timely recommended decision.

The Postal Service suggests that “one might get the impression” from Order No. 1201 that the task of distinguishing evidence from supporting documentation is simple. Motion at 6-7. Quite the contrary, that order describes past and current uncertainty, and announces that it will initiate a rulemaking to address these problems after the conclusion of this case. Furthermore, Order No. 1201 does not consider whether the Postal Service actions warrant extending the statutory 10-month period for considering a rate request. That Order found, and the Commission continues to find, that the decisions not to designate certain materials as evidence were decisions uniquely within the responsibility of the Postal Service, that such decisions were made by the Postal Service, and that these decisions were the proximate cause of Order No. 1201, which directed that additional time be allowed for discovery and cross-examination.

Presiding Officer action. The Motion suggests that the Presiding Officer may have allowed participants an unnecessarily lengthy period to respond to the revised content of the Postal Service direct case. It suggests that the Presiding Officer may have felt compelled to allow a six-week delay in the filing of intervenor direct cases by the finding in Order No. 1201 that the Postal Service “caused” the delay. Motion at 16. The Presiding Officer’s Ruling revising the procedural schedule does not tie the length of delay to who caused the problem. P.O. Ruling R97-1/54 allows a reasonable time for discovery and schedules cross-examination immediately after the Thanksgiving Holiday. The Postal Service accepts both of these actions. Motion at 4.

The revised schedule allows the time between the end of cross-examination and the filing of rebuttal evidence to remain unchanged. The Postal Service contends this is generous. The Commission is satisfied that the Presiding Officer has continued to schedule the conduct of this case with consideration of the need for expedition consistent with procedural fairness. The Service argues that intervenor direct cases will be largely unaffected by the addition of 49 library references to the Service's direct case. Neither the Postal Service, nor the Presiding Officer, nor this Commission can reach such a conclusion with any degree of certainty. The Presiding Officer's decision not to compress the time for preparation of testimony, but to compress subsequent phases of the case, is both reasonable and consistent with Order No. 1201.

The time for preparation of intervenor testimony. The Postal Service recommends that intervenor direct evidence, including rebuttal to the Postal Service, be due six days after the scheduled completion of cross-examination on Postal Service witnesses. P.O. Ruling R97-1/4, issued shortly after the prehearing conference, allowed 26 days between these events. The Postal Service also suggests that, if the schedule is revised in accordance with its wishes, it be provided with additional time for discovery because of the Christmas and New Years holidays. Under the existing schedule, Christmas falls during the 26-day period for the preparation of intervenor evidence, and New Years falls during discovery on that evidence, a fair balance.

This case has seen an exceptionally large number of revisions to the Postal Service direct case and related documentation. Many of these changes have been filed several months into the proceeding. The Service can better assure timely issuance of Commission decisions by reducing the number of errors in its initial filings, and the number of instances it submits untimely pleadings, than by attempting to reduce participants' opportunity to understand and respond to Postal Service evidence.

It is ordered:

1. The November 7, 1997, Postal Service Motion for Reconsideration of Order No. 1201 is denied.
2. The procedural schedule established by the Presiding Officer pursuant to Order No. 1201 is affirmed.

By the Commission.

(S E A L)

A handwritten signature in black ink, reading "Margaret P. Crenshaw". The signature is written in a cursive style with a large, sweeping initial "M".

Margaret P. Crenshaw
Secretary