

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

Evolutionary Network Development  
Service Changes

Docket No. N2006-1

PRESIDING OFFICER'S RULING ON MOTION  
OF AMERICAN POSTAL WORKERS UNION, AFL-CIO,  
TO EXTEND DISCOVERY AND DIRECTING  
UNITED STATES POSTAL SERVICE TO PROVIDE  
RESPONSES TO OUTSTANDING REQUESTS

(Issued July 7, 2006)

The original deadline for the close of the discovery period in this docket was May 22, 2006. American Postal Workers Union, AFL-CIO (APWU) sought an extension of that deadline, in part because the Postal Service had answered so many interrogatories late, and many other answers that were due were still outstanding. Consequently, I found it necessary to issue Presiding Officer's Ruling No. N2006-1/12. That ruling required the Postal Service to provide a status report on its discovery responses that were still outstanding. The purpose of the status report was to help me determine the extent to which the deadline for filing initial discovery should be extended in order to accommodate the rights of APWU and others to review anticipated Postal Service responses and make use of them in preparing their direct case in this docket.

On May 25, 2006, the Postal Service provided the status report requested. In its report, the Postal Service promised to respond to most of the discovery responses that were still outstanding by June 5, 2006. Based on that report, Presiding Officer's Ruling No. N2006-1/14 extended the deadline for filing initial discovery from May 22 to June

16, 2006, which necessitated a deferring of oral cross-examination on the Postal Service's direct case to July 18 and 19, 2006.

On June 16, 2006, APWU filed a motion to further extend the deadline for discovery.<sup>1</sup> According to APWU, an extension is necessary because discovery on the Postal Service's direct case is incomplete in several respects, including its failure to make good on its promise to produce certain documents by June 5, 2006; failure to produce responses compelled by rulings; and failure to respond to discovery requests for which answers are overdue. APWU identifies several categories of information it seeks through discovery that the Postal Service has yet to produce, as well as materials requested in Presiding Officer's Information Requests that have yet to be submitted.<sup>2</sup> On these grounds, APWU requests extension of discovery on the Postal Service's direct case "until 30 days after the Postal Service provides material responsive to all outstanding discovery[.]"<sup>3</sup> or alternatively "until such time as the Postal Service has responded to all pending discovery requests and has provided the postal documents and plans still under development, and the parties to this proceeding have been given a reasonable opportunity to examine them and serve additional discovery after that examination."<sup>4</sup>

In a reply<sup>5</sup> filed on June 20, 2006, the Office of the Consumer Advocate supports APWU's motion. While stating it does not wish to delay this proceeding, OCA notes the necessity of compiling a complete and meaningful record. Like APWU, OCA identifies several categories of information requested from the Postal Service which have not yet been provided, and which OCA argues are necessary for a full review of the END

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<sup>1</sup> Motion of American Postal Workers Union, AFL-CIO, to Extend Discovery, June 16, 2006 (Motion).

<sup>2</sup> *Id.* at 2-5.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.* at 6.

<sup>5</sup> Office of the Consumer Advocate Reply in Support of American Postal Workers Union, AFL-CIO Motion to Extend Discovery, June 20, 2006 (Reply).

proposal. On this basis, OCA supports the request to extend discovery until a specified time following receipt of responses to all outstanding discovery requests.<sup>6</sup>

In a brief reply filed on June 30, 2006, the Postal Service “defers to the Commission’s judgment on the merits of the APWU motion.”<sup>7</sup> However, if a decision is made to extend discovery and postpone hearings currently scheduled to begin on July 18, 2006, the Postal Service asks the Commission to take into account scheduling conflicts of its witnesses which “make it imperative that hearings not be re-scheduled to occur before September 6, 2006.”<sup>8</sup>

I share the moving parties’ sense of frustration with the pace of responses to discovery in this proceeding to date, in no small measure because of similar experience with the pace and completeness of responses to Presiding Officer’s Information Requests. It appears the Postal Service is laboring under an institutional disability, or perhaps even disinclination, to respond to requests for information in this case in a timely fashion.

The Postal Service is under a continuing obligation to respond to discovery requests and similar directions from the Commission on a timely basis. This obligation runs not only to the Commission under its procedural rules, but also to other participants and to the intended beneficiaries of the Commission’s advice under 39 U.S.C. § 3661, the Governors of the Postal Service. If the press of other business, or some other impediment, makes performance of this obligation infeasible, it is incumbent on the Service’s representatives to so inform the Commission, and suggest corresponding adjustments in the procedural schedule to accommodate the rights of other participants. The Postal Service has made no such suggestion here.

In order to fulfill the Commission’s statutory function of providing timely advice to the Postal Service on the consistency of its plan to reconfigure the postal network with the policies prescribed in the Postal Reorganization Act, it is necessary to advance this

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<sup>6</sup> *Id.* at 1-3.

<sup>7</sup> Reply of the United States Postal Service to Motion of American Postal Workers Union Seeking Extension of Discovery, June 30, 2006 (Reply).

<sup>8</sup> *Ibid.*

proceeding toward a reasonably proximate conclusion. Delaying subsequent stages of this proceeding until sometime after all outstanding requests for discovery have been received, as the movants urge, could postpone the completion of this case into the indefinite future.

For these reasons, I shall deny APWU's motion for extension, and maintain the currently scheduled date for the beginning of hearings. Consistent with its obligations, I expect the Postal Service to respond to outstanding discovery and the unanswered portions of Presiding Officer's Information Requests prior to the hearings, preferably by July 14, 2006.

#### RULING

The Motion of American Postal Workers Union, AFL-CIO, to Extend Discovery, filed June 16, 2006, is denied.

Dawn A. Tisdale  
Presiding Officer