

POSTAL REGULATORY COMMISSION

In the Matter of:)
) Docket No. PI2010-3
PUBLIC INQUIRY CONCERNING)
PROCEDURES FOR RATE CASES)
UNDER PART 3010, SUBPART E)

Second Floor
Postal Regulatory Commission
901 New York Avenue, N.W.

Washington, D.C.

Volume 1
Wednesday, June 16, 2010

The above-entitled matter came on for conference
pursuant to notice, at 10:05 a.m.

BEFORE: STEVE SHARFMAN, Moderator

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P R O C E E D I N G S

(10:05 a.m.)

1
2
3 MR. SHARFMAN: Okay. Can we begin this
4 conference? Good morning. My name is Steve Sharfman.
5 I'm the general counsel of the Postal Regulatory
6 Commission, as most of you know. We are webcasting
7 this conference. Consistent with our previous
8 practice, we will ask people if you want to speak to
9 stand, be recognized, and state your name so that
10 people can follow who are listening on the web, and
11 also so the reporter can properly identify comments.
12 At the conclusion of the hearing, talk to the reporter
13 and make sure that he spells your name correctly so
14 that we get a good transcript out of today's
15 conference.

16 This is an unusual circumstance that we're
17 facing here. We are faced with the potential for the
18 first so-called exigent rate case. As you know, the
19 operative statute allows the Postal Service, when it
20 feels it is necessary to file for extraordinary rate
21 relief -- the Commission has never had to deal with
22 such a case before. And, of course, everyone in this
23 room, I'm sure, hopes that we don't have to, that
24 something will transpire so the Postal Service does
25 not deem it necessary to file such a request.

1 But if it does, under the terms of the
2 statute, we will have 90 days to issue a decision.
3 It's going to be extremely difficult to review all
4 potential issues in that limited period of time, and
5 we would like to take this opportunity to identify
6 potential problems and try to discuss with interested
7 persons how we can resolve those problems. If we do
8 this in advance, there is a better chance that we will
9 avoid unnecessary technical hitches that prevent us
10 from doing the best possible job.

11 Let me go over a few ground rules for the
12 conference since this is an unusual conference. The
13 Commission has always been willing to respond to
14 questions from interested persons about how to
15 interpret its rules, and this conference is in line
16 with that. I can't call all interested parties and
17 say, do you have any questions. So we have convened a
18 conference at which we hope questions can be
19 discussed.

20 I can't and I won't issue definitive legal
21 rulings. I don't have that authority. The Commission
22 will make decisions as the case goes along. On the
23 other hand, to the extent we can discuss issues that
24 may come up, the Commission will be more informed. It
25 will have an opportunity to think about things before

1 reading any arguments or pleadings that attorneys may
2 file, and it will be able to provide prompter and more
3 reasoned answers. So I hope we get participation from
4 you rather than just discussion from me because I
5 don't have that much to say.

6 The Commission issued an order establishing
7 this public inquiry. When the request is filed, if it
8 is filed, it will be a separate docket. It will be an
9 R docket, consistent with previous rate requests, so
10 filings will be in that R docket.

11 Okay. Several parties took the opportunity
12 to file suggested questions or suggested topics that
13 we could discuss this morning, and my intention is to
14 start with those. But if at any time someone thinks
15 that there is an adjunct or tangential issue that
16 should be raised, please break in. The idea of this
17 meeting this morning is, as I said, to have a full
18 discussion of potential issues so that we can resolve
19 them in advance.

20 The public representative in the public
21 inquiry identified two areas that might be worth
22 discussion initially, and I think those were good
23 suggestions, the first one being scheduling. We have
24 not established a schedule. We can't establish a
25 schedule until a) the Postal Service files a request;

1 and b) we see what is in the request. To a large
2 extent, the breadth of the Postal Service's request
3 and the supported offers will affect how we do the
4 schedule. But we can talk about the things we have to
5 accomplish. We have 90 days. So this isn't exactly a
6 zero-sum game. This is a 90-sum game. But a day that
7 is spent on one thing can't be spent on something
8 else. So we have to balance the time available, and I
9 hope you will discuss your views as to how much time
10 you need to accomplish what you want to accomplish
11 during the course of the case.

12 I see the proceeding breaking into
13 essentially three parts. The Postal Service will file
14 something, and everyone will try to figure out what it
15 is that they filed and the support for it, and what is
16 in there. The second part is a period when we'll be
17 developing the record, both Postal Service information
18 -- the rules call for hearing -- and information
19 provided by anyone who chooses to participate. The
20 rules allow for comments from interested persons.

21 Finally, the third part is a period to allow
22 the Commission to analyze all of the evidence and
23 argument that has been presented to it and come to a
24 decision.

25 I'm going to start the discussion by saying

1 that I think the Commission will probably need 30 days
2 to deal with the material provided to it in order to
3 craft a well-reasoned decision. So if we have 90 days
4 to start, approximately the last 30 days are going to
5 have to be largely taken up through the Commission
6 reviewing evidence and making a decision. So that
7 leaves the remaining time for the two other issues at
8 which the public is going to be participating in,
9 learning about the Postal Service case and developing
10 their evidence.

11 I have some questions about that aspect of
12 it. If individual parties file comments that include
13 statements of fact, what might in other cases be
14 called evidence, can they do that in a way that it
15 becomes part of an evidentiary record that the
16 Commission relies on? Can they file comments that are
17 attested to by individuals or even by the attorneys
18 who submit them? Does anybody want to offer a view on
19 that?

20 (No response.)

21 MR. SHARFMAN: Not particularly. Okay.
22 We're going to observe that question because it was a
23 question that was raised specifically by DMA in their
24 comments, and we do have to deal with that. Let me go
25 to the other end of the spectrum. We have the Postal

1 Service filing a case essentially day one. The
2 Commission can ask questions during a hearing. It can
3 ask questions in writing before that. But the
4 expectation is that parties will not have formal
5 discovery rights.

6 Will technical conferences be helpful to
7 people trying to understand the Postal Service
8 presentation? Any views on that?

9 MR. LEVY: David Levy, L-E-V-Y. I'd like to
10 respond to the first question. If this is treated
11 like a notice and comment rulemaking, or even if it is
12 treated as a notice and comment rulemaking rather than
13 an on-the-record adjudication, then interested parties
14 won't have the same right to put in facts. The Postal
15 Service has to put in facts in support of its case.
16 In an ordinary notice and comment rulemaking, one can
17 have affidavits. The weight to be given the facts by
18 both the Postal Service and the intervenor, who will
19 obviously depend on the level of support provided --
20 there is nothing in the APA that says that interested
21 parties have any less right to put in facts through
22 affidavits or declarations than the Postal Service
23 has.

24 In terms of discovery and technical
25 conferences as a substitute for it, I think two things

1 to be made. One is the Commission does have the
2 authority and discretion to allow discovery. It is
3 not forbidden by that. But second of all, given the
4 limited amount of time, I think we have to be
5 realistic and expect that the Postal Service's case is
6 going to stand or fall on what is in this case-in-
7 chief and whether its direct filing satisfies all of
8 the factors of a 36-22 (a) (1) (e).

9 And so at this point, the question of
10 discovery is maybe a little premature because we would
11 have to focus --

12 MR. KEEGAN: Timothy Keegan. It's K-double-
13 E-G-A-N. I'm representing Time Warner. I agree with
14 everything David just said. If I could just add,
15 given the limited amount of time, technical
16 conferences are likely to be very useful, I think.
17 They traditionally have offered a more expeditious
18 route for getting information than written discovery
19 has. And that does not necessarily rule out discovery
20 -- technical conferences I think could very much
21 expedite getting essential information for interested
22 parties.

23 MR. SHARFMAN: Do you have a comment?

24 MR. DEL POLITO: A question.

25 MR. SHARFMAN: By all means.

1 MR. DEL POLITO: Gene Del Polito,
2 Association for Postal Commerce. Obviously, the time
3 is limited. You've asked for comments relative to
4 persons. The comments obviously are going to be based
5 on whatever it is the Postal Service has proposed. I
6 guess my question to you would be that since you're
7 allowing the Commission 30 days, is there anything
8 that you can tell us as to the scope of the
9 Commission's focus during this decision case. That
10 is, will the focus be on what the Postal Service
11 proposes, yes or no, does the Commission reserve for
12 itself to make changes significant from what the
13 Postal Service says. Is there any time whatsoever
14 that is going to be permitted to the other
15 participants to know what is going to be proposed, its
16 offer, comments, statements as fact that also should
17 be part of any deliberations.

18 MR. SHARFMAN: Okay. There are three
19 questions there. I'm going to start with the middle
20 one, whether participants have the opportunity to know
21 what the Postal Service may ask for.

22 MR. DEL POLITO: No. The Postal Regulatory
23 Commission.

24 MR. SHARFMAN: What the Postal Regulatory
25 Commission may ask for?

1 MR. DEL POLITO: They decide.

2 MR. SHARFMAN: They decide? The Postal
3 Regulatory Commission will respond to what the Postal
4 Service asks for and what any intervenor suggests. It
5 doesn't have a preconceived notion of what it is going
6 to do. It will wait and evaluate the record and make
7 a decision, as it does in all cases.

8 MR. STRAUS: David Straus from American
9 Business Media. Following up on what Gene said, I
10 think the concern, at least my concern, is that most
11 people believe that the Regulatory Commission is this
12 blank slate, that once the Postal Service proposes X,
13 the Postal Regulatory Commission can determine that
14 the rates should be anywhere from A to Z, and they can
15 put their own alphabet at the end. So my question
16 would be whether there will be time -- whether there
17 can be a procedure whereby there will be a very
18 limited amount of time for participants to react to a
19 Postal Regulatory Commission decision before it
20 becomes a final decision.

21 In the event of a screw-up, to use the
22 vernacular, if the Regulatory Commission has a blank
23 slate, that the Postal Service opens up its door and
24 think the Regulatory Commission might be in line with
25 that, that there is some concern, or at least have

1 some concern, that they could do something with some
2 very serious and adverse unintended consequences that
3 could be pointed out to them in a matter of a couple
4 of days. So if the Regulatory Commission can issue a
5 tentative decision, a week or four days before the
6 deadline and leave a little bit of time for the, oh my
7 Gods to come rolling in --

8 MR. SHARFMAN: That's a reasonable concern,
9 a serious concern and a reasonable suggestion. Thank
10 you.

11 MR. FOUCHEAUX: Dan Foucheaux for the Postal
12 Service. I'm not going to touch Gene's question, but
13 jumping back to the first two issues, I'm in general
14 agreement with David about -- I don't think the status
15 as evidence has the same role in this kind of
16 proceeding as it did in the -- cases or under --
17 ranking under the APA. But that's probably subject to
18 an admission to express an opinion on.

19 As far as technical conferences are
20 concerned, the Postal Service has always been very
21 willing to cooperate and to -- really, I think the
22 knowledge that you only have 90 days is even more
23 pressing on our cooperation than it has been in the
24 past. We will do everything we can to move this along
25 as quickly as possible. And I agree with David it

1 would be ideal to have an initial decision that people
2 could react on, we used to have those at the
3 Commission. Even in a 10-month case, that was not
4 possible, so in 90 days I would be skeptical that we
5 could do that.

6 MR. SHARFMAN: Gene.

7 MR. DEL POLITO: Yes. Has there been any
8 consideration whatsoever by the Commission as to
9 whether or not it would approach what it was about to
10 do within 90 days by first addressing the threshold
11 question of whether or not a proposal by the Postal
12 Service leads to what is in the law, as subsequent to
13 what it in the law as extraordinary circumstance and
14 therefore should go forward, or is the Commission
15 reserving that statement until after everything is
16 over?

17 In other words, what an intervenor may
18 choose to discuss or offer may be different depending
19 upon how that threshold question is answered.

20 MR. SHARFMAN: I think I can say fairly that
21 the Commission has thought about that question, but I
22 don't think that any decision has been made. I'm not
23 sure that a decision can be made in advance of the
24 case.

25 MR. DEL POLITO: No, not in advance of the

1 case. At the time the case is filed --

2 MR. SHARFMAN: Yes.

3 MR. DEL POLITO: -- is there any
4 consideration whatsoever in terms of the purpose
5 answering the first question before moving on through
6 the other 90 days?

7 MR. SHARFMAN: Theoretically, that's
8 possible. And largely, that would affect the case
9 that the Postal Service files. You can hypothesize a
10 case where they clearly don't meet a standard, and
11 another one where they clearly do meet a standard.
12 But probably they're going to file something that they
13 believe meets the standard that others don't believe
14 meets the standard, and it may well be that resolving
15 that issue will involve factual determinations as to
16 the extent to which the circumstances are unusual or
17 extraordinary.

18 And again, I can't prejudge what will
19 happen, and anyone can read their filing and say, this
20 doesn't meet some standard, and suggest that the
21 Commission should agree with it. But at least
22 initially, we certainly can't say that we will try to
23 resolve that question regardless of how complex that
24 question is while the 90-day clock is running. We'll
25 just have to see whether that's a feasible result or

1 not.

2 You haven't spoken yet, either one of you.
3 Go ahead.

4 MR. OLSON: Bill Olson from ValPac. Dan,
5 you sure may not want to address David Straus's point,
6 but I will. I don't know that it's at all clear from
7 the statute that the Commission has the right to
8 change the rates the Postal Service is proposing. And
9 Gene seems to assume that, and David has. And, you
10 know, we don't have the express statutory authority
11 here in this section that we do with the complaints or
12 with the annual compliance review.

13 So I would at least say that whoever thinks
14 the Commission has the authority to change
15 unilaterally all the rates that the Postal Service is
16 noticing has the burden to show where that comes from
17 in the statute at some point, and not necessarily
18 today.

19 MR. SHARFMAN: Bill. Would you give your
20 name and everything for the record?

21 MR. BAKER: Baker. In the Commission's
22 general rules, there are always statements to the
23 effect that motions can be made at any time and that
24 memorandum -- at any time.

25 MR. SHARFMAN: Yes. Circling back to the

1 statement that Mr. Keegan made, many of you in this
2 room are expert in analyzing Postal Service testimony.
3 We at the Commission benefit from having a larger
4 staff than many of you do. My question is how much
5 time, at a minimum, do you need to review a case
6 before you think you could productively participate in
7 a technical conference? Anybody want to offer a
8 thought on that? Tim?

9 MR. KEEGAN: I didn't think it's possible to
10 answer that question really until we see the filing.

11 MR. SHARFMAN: David.

12 MR. LEVY: David Levy. I agree with Mr.
13 Keegan.

14 MR. STRAUS: David Straus. Perhaps if the
15 Postal Services wants to tell us now what kind of
16 filing it's going to make -- we might have a better
17 chance of answering your question.

18 MALE VOICE: I would say if the filing
19 resembles that -- the McCray case and the old statute
20 it would take probably a minimum of a few weeks.

21 MR. SHARFMAN: Okay.

22 MR. HENRY: I'm not prepared to say exactly
23 when we're going to file. I think I should point out,
24 though, that if you look at the structure, the statute
25 structure, in addition to the rules, they don't embody

1 an expectation that they will be filed -- the same
2 kinds of documentary support will be filed in general
3 ray cases, if only because we now have a mechanism, an
4 annual report and an annual compliance determination
5 that further reviews based across the data and other
6 basic data -- and I would expect that whatever the
7 Postal Service files, realizing the limitations of the
8 90-day limit that it will rely as heavily as it can,
9 you know, within reason and logic, on what has already
10 been filed in the ACR.

11 MR. SHARFMAN: We've touched on the
12 potential for parties to file comments that will
13 include technical as well as legal arguments or
14 propositions. And I want to urge parties to be as
15 complete in their filings as possible. I say the same
16 thing to the Postal Service, because we want to
17 understand what everybody has to tell us. And the
18 more complete the documents are, the easier it is for
19 us to make sense of where we're going on this.

20 One issue that relates to that is something
21 I raised previously. If you file a comment of a
22 technical nature, will parties be willing to answer
23 questions from the Commission should the Commission
24 seek further clarification? And do you want an
25 opportunity to suggest questions about comments that

1 other public participants might file with the
2 Commission in the same way that there is an
3 opportunity to file requests for clarification
4 concerning material that the Postal Service files?
5 Any thoughts on that?

6 MR. STRAUS: David Straus. I think anybody
7 would be crazy to say they're not willing to answer
8 questions from the Commission. I think all parties,
9 if they submit comments, would be willing to entertain
10 questions. Whether they are capable of answering them
11 or answering them on time is another question because,
12 as I said, we don't have staffs.

13 Was the second part of your statement that
14 we parties might be putting to the Commission
15 questions that the Commission would in turn ask of
16 another intervenor?

17 MR. SHARFMAN: Yes.

18 MR. STRAUS: All right. I don't have any
19 comment on that yet.

20 MR. SHARFMAN: Okay.

21 MR. BAKER: Bill Baker again. I was going
22 to try to get a sense, Steve, of what the Commission
23 has in mind by the various opportunities mentioned in
24 the rule for type three cases for public comment.
25 There is a reference to a specified period for public

1 comment. There are interested persons may submit
2 suggested questions and ask an explanation of why is
3 it an important question. It sounds like kind of an
4 elaborate comment to me. There is reference to post-
5 hearing written comments and possibly reply comments.
6 And the first question is has the Commission any rough
7 idea of how they expect that to unfold. And the
8 second question is once the case is filed and the
9 Commission sees what is in it, is there a possibility
10 that the Commission might invite comment on the
11 specific issues earlier in the case so the people
12 could address it earlier on.

13 MR. SHARFMAN: Do you think it should?

14 MR. BAKER: I haven't seen the case yet.
15 Dan doesn't want to share it with us. But it seems
16 like if there is -- you know, sometimes the Commission
17 issues notices of inquiry in past cases where there is
18 some issue that struck the Commission that they wanted
19 to address accuracy or something like that in a case
20 like this as well.

21 MR. SHARFMAN: Right, right. And the issue
22 is we want to spend the minimum amount of days
23 worrying about procedural issues. I guess re-ask the
24 question. Do you think it is likely to be helpful? I
25 know you haven't seen the cases yet. But do you think

1 it would be likely to be helpful to solicit procedural
2 comments early in the case as opposed to promptly
3 establishing a schedule and perhaps allowing motions
4 for adjustment of the schedule, if that seems to be
5 necessary?

6 MR. TODD: David Taub representing Mail
7 Holders Association. It seems to me that if the
8 Commission has any thoughts about its procedures, that
9 the time to take care of that is now, before the
10 filing of the case. Are we to assume at the moment
11 that the procedures that were adopted some time ago by
12 the Commission for exigent filings are to be the
13 procedures?

14 I gather the answer is yes. It seems to me,
15 however, if anyone has any thoughts about that, this
16 is the time to bring it up, not after the filing of
17 the case when the time limits are so severe that the
18 notion of worrying about some procedural detail just
19 strikes me as counter-productive.

20 MR. SHARFMAN: I think I want to comment
21 that, yes, the Commission believes its procedures will
22 work, and it intends to use them. But the purpose --
23 a major purpose of this conference is to get views
24 from the people who have to live with them. And if
25 they have suggestions or can identify something that

1 we haven't thought of that maybe we should take into
2 account, we'd like to get those ideas now. And you're
3 right about that. To the extent that that can be
4 done, we appreciate the help.

5 MR. HENRY: If there are any questions about
6 procedures, we should smoke them out as soon as
7 possible before the case gets filed. But also, I'd
8 like to express a particular concern that the Postal
9 Service has that whatever unfolds in the case, bear in
10 mind that there are limitations on the Postal
11 Service's resources as well. And people tend to think
12 of the Postal Service as this big, huge, rich
13 organization -- well, not lately --

14 (Laughter)

15 MR. HENRY: And it's true, we have a lot of
16 money at our disposal. But there are just a few
17 people in the world who can answer some of the
18 questions that are liable to come up in a case like
19 this, and they're going to be stretched to the limit,
20 just as the Commission staff is going to be stretched
21 to the limit. So just bear in mind that we're going
22 to be as cooperative as we can, but there are
23 practical limitations on what we can do.

24 MR. LEVY: Levy. I'm sorry.

25 MS. KOBE: Go ahead.

1 MR. LEVY: The one way of dealing with
2 that --

3 MR. SHARFMAN: Your name again.

4 MR. LEVY: L-E-V-Y. The Commission
5 obviously does not have the power to extend the 90
6 days. The Postal Service has made a prima facie
7 filing. The Postal Service has the authority, of
8 course, to waive in a 90-day filing by allowing it to
9 be extended. So if there is a staffing crunch, the
10 Postal Service, I think, has within its power the
11 ability at least to alleviate it.

12 MS. KOBE: Catherine Kobe for EPS. I'm not
13 a lawyer, so maybe it's obvious to everybody else but
14 me. But how exactly, since you are following the
15 usual discovery process here, do you perceive that the
16 hearing would work and what it's supposed to cover?
17 And then what would be -- how does the technical
18 conference work as being or not being part of the
19 record in the end?

20 MR. SHARFMAN: Those are good questions,
21 both of them. And the rules established for this type
22 of case provided for a hearing at which the Commission
23 would question Postal Service witnesses, and the
24 Commission solicits questions that it might profitably
25 ask. But it has not subjected the Postal Service to a

1 discovery obligation in which it has to answer every
2 question that any intervenor might choose to ask. And
3 we have never done this before, and we're going to see
4 how it works. So it's a little difficult to answer
5 with hard and fast specificity exactly how it is going
6 to work. What we'd like to do, I think, is to the
7 extent possible shorten the time of the hearing by
8 answering -- getting answers to relevant questions
9 before the hearing has to take place.

10 One of the concepts that we have been
11 thinking about internally, as part of their filing the
12 Postal Service will identify someone that the
13 Commission can contact if it has questions. In the
14 past, participants reviewing a Postal Service case
15 have frequently found circumstances where they didn't
16 understand perhaps the number -- a number in one
17 instance is number nine, and in another place the
18 number seven is used for the same purpose, just simply
19 the kind of thing that there is a typographical error,
20 there is an errata, there is a failure to completely
21 coordinate a case. And those questions have been
22 clarified through the discovery process or through
23 technical conferences. And that's one of the things
24 that you can do in a technical conference, is say, I
25 don't understand why the numbers used -- nine is used

1 here, and seven is used there, and you can look at it
2 and say, it should have been nine in both places, and
3 then you understand the issue.

4 But if participants have questions of that
5 nature, and they are not overly burdensome in asking
6 questions of that nature, it would seem to me that
7 perhaps they could contact the Postal Service
8 individual who is designated to respond to questions
9 on the case and say there seems to be an inconsistency
10 in your case. Could you find out which number is
11 correct? It might lead to an errata being filed that
12 would clarify the record and make it clear for
13 everybody.

14 Can I ask the Postal Service if they would
15 be willing to respond to those kind of questions?

16 MR. FOUCHEAUX: Yes, yes. That's a useful
17 suggestion. I would point out that even under the old
18 rate cases, informal contacts were commonly used as a
19 way of certain pending motions and formal requests.
20 So I'll say that, to point out that we don't want to
21 be inundated with questions like that, particularly
22 ones that are pretty obvious. So one of the problems
23 we had in the old rate cases was that people didn't
24 take the time to carefully review all of the
25 documentation before they started coming up with the

1 questions. So I would encourage everybody to do that
2 again. But we will be as cooperative as we can. It's
3 in everybody's interest, at least in our interest and
4 the Commission's interest, to make sure that this case
5 moves along in 90 days the way it is supposed to.

6 MR. SHARFMAN: Yeah, Bill.

7 MR. OLSON: Bill Olson. Moving from the
8 questions that are easy to the questions that are
9 hard, can we -- the rule 65C that you just discussed
10 only gives members the opportunity to ask you --
11 propose to you questions that you can ask at the oral
12 hearing, but there is no place where it actually says
13 we can do what we do in DCR cases, where we can
14 execute this and get a written request from the Postal
15 Service, so we do our discovery through you for
16 whatever you, the Commission, thinks is appropriate.

17 I think it would help us all. I know that
18 the public representative had a very helpful comment
19 there, saying, you know, we could always do that by
20 motion. But is there a way to evolve to avoid motions
21 practice, and is there a procedure that says, you
22 know, by such and such a date, any questions that you
23 want to submit -- that you want the Postal Service --
24 the Commission to submit in writing, you know, and get
25 them in, and we'll evaluate them and make that

1 decision.

2 That's not in the rules, but that would be a
3 --

4 MR. SHARFMAN: I think that's a helpful
5 suggestion. I think we can make it more helpful. As
6 Mr. Foucheaux indicated, the Postal Service has
7 limitations, too. And I don't think it would be
8 profitable to wait to the last possible minute to get
9 questions in. I think that if an interested mailer
10 were to submit a question to the Commission to ask on
11 day 7 as opposed to day 30, if the Commission felt it
12 was the type of question that was both important,
13 relevant, and best submitted in writing, it could
14 submit that question to the Postal Service in writing
15 on day 8 rather than waiting for the hearing.

16 If the question is best dealt with orally or
17 perhaps is superfluous, it may not submit it to the
18 Postal Service immediately. But if you have
19 suggestions of questions for the Commission to ask the
20 Postal Service, file them as soon as you can, and the
21 Commission will review them, and if it deems it
22 appropriate, file them.

23 MR. OLSON: As a follow-up to that, does
24 that need to be done by way of motion? Or do you
25 think perhaps when the Commission has its first order

1 issued on the case, it can provide a special rule for
2 the respondent that we can permit such questions be
3 posed to the Commission?

4 MR. SHARFMAN: I'll look at rule 65 now. I
5 didn't think it required motions, and I didn't think
6 that it necessarily contemplated unnecessary
7 procedures. If you have questions that you submit
8 that you think should be asked the Postal Service, I
9 think the Commission can simply act on the basis of
10 that suggestion.

11 MR. OLSON: Not to be boring, but the issue
12 is whether the rule says you can submit a question to
13 be asked verbally at the hearing. And more complex
14 matters are not often fruitfully submitted verbally at
15 a hearing to the witnesses as necessarily prepared for
16 it. So what I'm saying is could we read that rule to
17 be rather than just submitting questions to be asked
18 verbally at the hearing, also submitting questions of
19 the Postal Service. We're asking the Commission to
20 ask the Postal Service in writing.

21 MR. SHARFMAN: I think you could. If you
22 think that it's more clear to do it in the form of a
23 motion, feel free, any way that you want to interpret
24 the rules. I'm not going to tell you that you can do
25 it or can't do it at this point. We're trying to find

1 ways to make the system work. Tim, you had a --

2 MR. KEEGAN: Yes, first in connection with
3 the issue that came up previously, questions from one
4 party to another. It seems to me, first of all, that
5 allowing that on a completely liberal basis would
6 create a special danger of a blizzard of questions
7 going in every direction. I'm aware of the tradition
8 as well as everyone else. On the other hand, I think
9 there ought to be some accommodation for circumstances
10 in which there is good reason to ask such a question.
11 So that too I think could be handled perhaps by
12 requiring a motion, possibly a motion that states a
13 good cause for the question being asked.

14 Secondly, I don't know if there was
15 addressed this yet, but an important issue is going to
16 be how many rounds of comments are permitted, whether
17 we have comments on the Postal Service case and then
18 one round of reply comments, or probably the
19 alternative is a third round of comments and no
20 interception. It probably makes sense to have the
21 third round of comments, given the gravity of the
22 issues at stake.

23 MR. SHARFMAN: Tim, do you think it's
24 important that comments be filed simultaneously, or
25 can comments be filed by parties as things occur to

1 them?

2 MR. KEEGAN: I never thought it was
3 important that they be filed simultaneously, except if
4 it would burden the Commission to do it otherwise.

5 MR. SHARFMAN: Anybody else have a comment
6 on that?

7 MR. BAKER: Bill Baker. As I read the
8 Commission's rules, it contemplates post-hearing
9 written comments and possibly reply comments. Whether
10 the parties will produce by the bench comments before
11 the hearing or at some other point, you know, I think
12 we're free to do so. I think the rule as stated
13 contemplate only two rounds, and they are
14 simultaneous, such as --

15 As far as questions to others were the
16 Commission to ask of other parties, I think it would
17 be helpful to get a sense of at what point in the case
18 the parties would be submitting comments or statements
19 of fact that would be subject to that sort of thing;
20 if it's not until day 50 or day 60, I'm not sure the
21 Commission is going to have time to ask questions. So
22 you set the hearing schedule. It may affect whether
23 that's really -- it's not allowing anything
24 substantive until post-hearing comments then they may
25 not be coming in until day 50 or day 60.

1 MR. BRINKMAN: Bob Brinkman, representing
2 Discovery Financial Services. It seems to me the
3 Commission has got us listening to all of this. You
4 have got to set up a schedule for the hearing and the
5 comments real quick, like within a couple of days --
6 so everybody can center everything around that
7 schedule.

8 MR. FOUCHEAUX: Dan Foucheaux. One
9 suggestion that I think is -- if people anticipate
10 they might have questions like proposals in these
11 basic cost reports as they relate to whatever we file,
12 you can get started now looking at those. I wouldn't
13 wait until we file a case to decide to start figuring
14 out what the implications of the costing is. You
15 know, I would point out that that's what the ACR
16 process is for, and you should -- if you're interested
17 in that sort of thing, you should be looking at that.
18 But there might be some questions that arise out of
19 those reports that have a relation to what we file.
20 So you can start formulating your questions now so
21 that you're ready to go right out of the chute.

22 MR. McLAUGHLIN: Tom McLaughlin. The
23 procedure you've got is parties submit questions to
24 the Commission, and the Commission then decides which
25 ones they're going to ask at the hearing. In my

1 experience, when you submit questions to a party, the
2 value of oral cross-examination is that if they'll
3 answer it or maybe their answer raises some other
4 question, there is the opportunity to follow up and
5 resolve it. If the Commission is just going to be
6 reading questions, reading pre-submitted questions to
7 a witness and the witness says, oh, the answer is A,
8 is there going to be any opportunity for parties in
9 the hearing room to do very brief follow-up, not in
10 any way that would start new lines of cross-
11 examination or, you know, take off for 30 minutes or
12 whatever. Maybe just one question, two questions,
13 whatever to clarify an answer that has been raised.
14 Otherwise, you may have a situation where you just
15 have this record that is almost infantile in the sense
16 that it doesn't really address things because the
17 questions weren't fully answered, or there was no
18 follow-up.

19 MR. SHARFMAN: I think you raise an
20 interesting point, but I think that follow-up could be
21 difficult to rein in. And I think what we hope was
22 that in presenting the question, there might be an
23 explanation of the purpose of the question, what the
24 question hoped to elicit, how the question could be
25 put in context so that the individuals the Commission

1 was asking questions would understand the issues and
2 could follow up.

3 I'm going to speak from personal experience.
4 I know sometimes attorneys when cross-examining like
5 to trap a witness. But it's much more helpful for the
6 body that is trying to resolve a case to know the
7 purpose of the question in advance and can actually
8 follow the attorney's line of thought. And if you put
9 some context on, perhaps follow-up can be done from
10 the bench. I don't think that the commissioners are
11 limited to only the words of the written question that
12 was asked.

13 MR. STRAUS: I should ask this question
14 under somebody else's name. David Straus. Are the
15 commissioners going to be asking these questions or is
16 the staff going to be asking the questions? How do I
17 say this nicely? I don't know that the commissioners
18 themselves have the detailed knowledge to be able to
19 follow up appropriately if a witness's answer is
20 evasive, incomplete, or flat wrong. If the staff were
21 to be asking questions, I think part of Tom's concern
22 would be eliminated. But we have all seen people
23 reading questions from their consultants to the
24 witnesses, and there is no follow-up because there is
25 just no understanding there.

1 I know it would be unusual for the
2 Commission to have staff participate, but if the
3 question is going to be effective, I would think that
4 this Commission staff expert in that field ought to be
5 the one conducting the examination. The commissioners
6 can't be experts on every issue that is presented to
7 them, but they have staff that is.

8 MR. STOVER: I'm David Stover, American
9 Greeting Card Association. Two comments on the
10 present issue. One, I think it's very likely that
11 familiarity with a good, informative statement by the
12 submitter of the question as to what the question is
13 aimed at would produce more good answers from the
14 witness stand. Maybe the Postal Service could take it
15 upon itself to be sure that the witness or witnesses
16 who come over to answer the Commission's questions are
17 thoroughly familiar with the reasons the submitter
18 gave for wanting to know the answer to the question.

19 The second point is responsive basically to
20 Mr. McLaughlin. Follow-up of a diluted or bobtailed
21 kind could be enabled by allowing people sitting in
22 the hearing room to submit questions in writing to the
23 bench in real time so to speak and let the Commission,
24 assisted by the staff if necessary, as Mr. Straus,
25 suggests, let the Commission then exercise its

1 discretion from the hip, so to speak, as to which of
2 those follow-up questions are worth asking.

3 MR. LEVY: David Straus -- I mean David
4 Levy. I actually agree with Mr. Straus. I think the
5 Commission, given the complexity and range of the
6 issues, ought to at least give itself the discretion
7 on particular subjects to let staff do questioning
8 because if -- and I must respectfully disagree with
9 Mr. Stover, having tried the idea of feeding questions
10 to -- not from e-mail with a Blackberry, but actually
11 whispering to a colleague who is doing cross-
12 examining, it is really not very practical to feed the
13 questioner in real time with supplemental questions
14 because they can't listen to their witness with one
15 ear and listen to cross-examination suggestions with
16 the other.

17 If the questioner isn't prepared to follow
18 the twists and turns of the witness ahead of time, the
19 practical matter of the questioning degenerates into
20 another opportunity for the witness to give
21 surrebuttal. So there may be times when the
22 commissioners want to ask questions themselves, but it
23 is within their discretion and certainly not shameful
24 for the commissioners to say, on these technical
25 areas, we would like to delegate to a staff member to

1 ask questions in this area.

2 MR. SHARFMAN: Any other comments on this
3 particular issue?

4 (No response.)

5 MR. SHARFMAN: Okay. EMA's written comments
6 asked for discussion on the opportunity for post-
7 hearing questions. We've already discussed or have
8 been discussing the potential for follow-up questions
9 during the course of the hearing. Does anyone believe
10 it would be important enough to allow time in the
11 schedule for interested persons to essentially pose
12 written questions that the Commission might choose to
13 use for follow-up following the hearing? Was that an
14 understandable statement? Does anybody think that
15 that is sufficiently worthwhile so that an additional
16 week, say, should be carved out of the schedule to
17 allow for questions following the hearing?

18 MR. McLAUGHLIN: Tom McLaughlin again. I'm
19 not sure that there necessarily has to be an
20 additional week that blocks out everything else. It
21 seems to me that if you allowed the parties two days
22 to submit follow-up questions to the Commission, then
23 the Commission presumably would have the same
24 discretion there as to whether they are going to
25 actually propound those questions to the Postal

1 Service. That doesn't necessarily mean that you have
2 to stop everything else in the schedule and to wait
3 and see how those questions are answered. To some
4 extent, things can be going on simultaneously.

5 Now obviously, once you have the final
6 rounds of comments coming, by that point, people ought
7 to have all of the answers to all of the questions
8 that have been out there. But it might be useful to
9 have a very brief period after the hearing for people
10 to do follow-up questions, and the Commission take it
11 from there. I don't think it would take necessarily a
12 long time. The parties should realize in asking the
13 follow-ups that it can't be a wholesale substitution
14 for or a back door to discovery. It has got to be
15 narrow and limited.

16 MR. SHARFMAN: Do you think there is a
17 minimum time that should be allowed between the final
18 date for getting answers to any follow-up questions
19 and the submission of what I'll call the formal
20 comments that would be equating to a brief in a
21 different type of case?

22 MR. McLAUGHLIN: Two or three days, take a
23 long time.

24 MR. SHARFMAN: The answer is two or three
25 days. Does anybody disagree with that?

1 (No response.)

2 MR. SHARFMAN: Okay. In its comments or
3 suggested topics for discussion, ValPac raised a
4 number of issues that were largely legal in nature,
5 and I've already said that the Commission is unlikely
6 to want to state in advance an answer to legal
7 questions, but I'd like to allow for discussion if
8 people want to respond or if ValPac wants to take the
9 opportunity to slightly elaborate on the issues that
10 it sees important in this case.

11 Mr. Olson, do you want to focus on one of
12 your questions to see if you can get a discussion
13 going that will help us to prepare for what we might
14 have to deal with?

15 MR. OLSON: Well, not really. We put
16 everything we can think of on a piece of paper. We
17 thought that others were going to be giving it equal
18 attention, but it looks like we did a little more than
19 some. I think one issue that we raised in the
20 beginning that will pop up inevitably in this case is
21 going to be who decides whether extraordinary or
22 exceptional circumstances exist, and it's again one of
23 those pesky legal issues, as you called them, that we
24 did put in there. The question will become does the
25 Postal Service decide that when it makes it filing,

1 and then the Commission decides whether those rates
2 are reasonable, equitable, and necessary, or is that a
3 matter that the Commission is going to take to its
4 side to decide whether there are those circumstances
5 and that the precondition is met.

6 If the Commission is of the view that it is
7 not in the Commission's jurisdiction to make a
8 reexamination of whether there are extraordinary or
9 exceptional circumstances -- I'm suspecting they have
10 fewer comments in responding than otherwise you would
11 receive.

12 So I would just say that if the Commission
13 has any notion of its own legal view on that issue
14 that will help bind the procedure at this time.

15 MR. SHARFMAN: I think that's fair, but I
16 think we're in a situation that this is the first case
17 that we have had to deal with on this. And it has
18 been my experience that the Commission generally likes
19 to hear from interested and expert attorneys on that
20 type of question before it makes an initial decision.
21 So I would expect that you all will have to brief that
22 kind of issue to help the Commission make a decision.
23 And it may be that a Court of Appeals will review it
24 at some point. But I don't think we're prepared to
25 make a decision in advance.

1 MR. STRAUS: Steve, could you give us -- I
2 don't think it's premature if you give us the order in
3 which things are going to happen in terms of comments
4 by the parties, the hearing, whether there be a
5 comment brief after the hearing, just what procedural
6 steps are there going to be, without talking about the
7 intervals, just the steps themselves in order from the
8 filing to the decision.

9 MR. SHARFMAN: Well, I can give you a
10 general idea, but I think that the purpose of today's
11 conference was to get input so that we could perhaps
12 refine the general ideas that I might have had.

13 MR. STRAUS: But I think we're floundering a
14 bit. If we had a target, you know, if you gave us
15 what you think the procedural steps should be, I think
16 that we'd have a more focused discussion on some of
17 these as we get into it further.

18 MR. SHARFMAN: Well, when you have a filing,
19 the first step is probably going to be to try and
20 understand the filing. I think we're going to have
21 technical conferences. It will depend on the scope of
22 the Postal Service filing as to how many conferences
23 will be most appropriate. We try to schedule them
24 early in the case. We expect to be receiving
25 questions from interested persons and developing

1 questions on our own that we can ask in writing.

2 After a period of time, we'll have a
3 hearing, at which we can ask oral questions.

4 MR. STRAUS: So that hearing will be just
5 the Postal Service case.

6 MR. SHARFMAN: That would be just the Postal
7 Service case. Yes, Tom.

8 MR. McLAUGHLIN: Tom McLaughlin again. It
9 seems to me that the Commission is going to know in
10 advance exactly which day the Postal Service is going
11 to file. I'm sure the Postal Service will be
12 communicating that to the Commission. So you're going
13 to know in advance that on Tuesday this filing is
14 going to be coming over. And you traditionally issue
15 an order to the public acknowledging the filing and
16 providing opportunities to intervene or whatever.

17 It seems to me that knowing in advance when
18 that is going to happen that the Commission should
19 include in that initial order and notice a tentative
20 schedule. And that could be done -- you can write the
21 tentative schedule up in advance, knowing what day the
22 Postal Service is going to file on. So that shouldn't
23 be something that requires you to wait a week before
24 you get that notice out. And putting out a tentative
25 schedule I think would at least give the parties an

1 opportunity to take a look at it. And if you have
2 missed something or it creates a serious problem,
3 there would be a chance for parties to come in and
4 make suggestions about the schedule.

5 MR. KEEGAN: Tim Keegan again for Time
6 Warner. With respect to the legal issue that Bill
7 Olson raised, the Commission's rules governing an
8 exigent case at least very strongly imply whether or
9 not the Commission believes it has authority to decide
10 the issue of whether there are exigent circumstances.
11 The accompanying discussion also takes that view. So
12 I would just say that anyone who thinks otherwise
13 ought to be working on a legal memorandum without
14 further ado.

15 MR. STRAUS: Imagine at the hearing and the
16 discussion of the procedural steps and after that
17 there would be some number of rounds of comments, at
18 which point we would close and then the Commission
19 would just give us 30 days.

20 MR. SHARFMAN: There will be an opportunity
21 for comment. Let me suggest that one issue that will
22 be helpful perhaps for us to discuss as this group is
23 whether it makes sense to combine legal and what I'll
24 call technical issues in a single set of comments or
25 whether to separate them into different documents or

1 have different dates for the preparation of those
2 types of comments. Does anybody want to offer a
3 thought on that? Tom?

4 MR. McLAUGHLIN: Well, I don't think it
5 makes any sense to have separate filing dates for
6 those kinds of comments because that just adds time
7 into the schedule. There again you can simultaneously
8 track those. And in fact, when people normally file
9 comments on either the over-rate cases or we file
10 briefs or any other proceeding, you mix technical and
11 legal issues in where the first part is legal and the
12 second half is technical. Sometimes those issues
13 overlap. Depending on what the technical issue is,
14 there may be a legal issue related to it.

15 So I think the items should still be
16 together. If I party wants to file a separate legal
17 memorandum along with technical comments, they're
18 obviously free to separate them themselves, but they
19 ought to all be on the same dates

20 MR. BAKER: I agree with Tom, although again
21 if the Commission wants to invite comment on a legal
22 issue earlier, they are free to do so.

23 MR. SHARFMAN: Okay. That's true. Thank
24 you. Any other thoughts on that? In terms of
25 responding to Mr. Straus, at this point I can't tell

1 you exactly what day, whether it's day 42, comments
2 would be due or a final date would be.

3 MR. STRAUS: I excluded intervals from my
4 question. I was just trying to find out -- for
5 example, there would be no opportunity, it seems --
6 and I'm not contesting this -- for parties to ask
7 questions of other parties. I mean, if one party
8 recommends that a rate be adjusted in a certain way,
9 the only opportunity that the affected party would
10 have would be in a reply comment. There wouldn't be
11 any discovery. There wouldn't be any hearing on the
12 intervenor's comments. There would be the Postal
13 Service's case, the hearing, everyone else says
14 whatever they want to say, and the Commission issues a
15 decision. That's what I'm trying to understand.

16 MR. SHARFMAN: I think that appears to be
17 correct. I asked earlier about the desire for
18 opportunity to pursue questions of other participants,
19 and presumably the Postal Service could take advantage
20 of that and ask questions of participants too. And
21 there was a limited enthusiasm for allowing a period
22 for that.

23 MR. STRAUS: You brought it up yourself. If
24 a party were to submit -- and I expect that there will
25 be parties that do this -- submit an affidavit by the

1 same person who is testifying in the rate case, that
2 would be coming in after the hearing. And as you
3 suggested, there would be no opportunity by anybody,
4 including I guess the Commission, to probe, ask
5 questions about that affidavit. It would just be out
6 there and subject to reflect on it, but no hearing
7 process.

8 MR. SHARFMAN: I think that's probably what
9 we're looking at unless there are more days in 90 days
10 than I know.

11 MR. STRAUS: An alternative that I'm not
12 suggesting is to have parties submit their comments
13 before the hearing and have the hearing encompass both
14 the Postal Service case, and then the Commission would
15 then have the opportunity to question other parties.
16 I'm not suggesting that, but it's --

17 MR. SHARFMAN: But is there anybody who
18 wants to suggest that?

19 MR. DEL POLITO: Gene Del Polito. Look,
20 this is not a 10-month proceeding. It's 90 days. The
21 central issue here is what does the Postal Service ask
22 for, not what does anybody else say ought to be done.
23 And under the old rules, under the old law, if I asked
24 him a question, he had a responsibility to reply
25 within 90 days. He has no right to have open access

1 to my checkbook. You want to ask a question, you ask
2 it of whatever the Postal Service has proposed.

3 The whole idea of opening the door if
4 there's going to be questions to other people as far
5 as I'm concerned accomplishes no real entity. What we
6 need to hear from you and from the Commission before
7 day 1 begins is a clear explication of whether or not
8 those will be the rules that will govern this
9 procedure or whether we end up in a food fight and a
10 free-for-all over a 90-day period.

11 MR. BRINKMAN: Bob Brinkman. Actually,
12 since the Commission is going to reserve 30 days to
13 write the decision, it's a 60-day period, not a 90-day
14 period. It's not much time.

15 MR. BAKER: Bill Baker. My own thought is,
16 given it's likely the parties will submit something
17 like an affidavit in their written comments, in the
18 old rate cases, we would mutually have a week to
19 provide comments. I'm not sure. You might want to
20 consider giving us more like 10 days, maybe a longer
21 time, because these affidavits will be the first time
22 we see this stuff. It's not like we'll be seeing
23 testimony in advance of a hearing and know what other
24 people are suggesting. We may need a little bit more
25 time for that stage.

1 MR. SHARFMAN: Bill, could you speak up,
2 please?

3 MR. BAKER: Yes. I was just saying that
4 since we will not know what other parties are
5 proposing until they fill an affidavit in in the
6 written comments after the hearing, we may need a
7 little more time then to make cases use to provide
8 reply comments to respond if it affects our client's
9 interests, whereas in rate cases, we saw their
10 testimony ahead of the hearing, we had done some
11 discovery, and we had a lot of time for questions.

12 MR. SHARFMAN: Does anybody else want to
13 address the amount of time that should be allowed for
14 reply comments?

15 (No response.)

16 MR. SHARFMAN: Should I take silence as
17 general agreement or general disagreement or lack of
18 interest?

19 (Laughter)

20 MR. SHARFMAN: Tom.

21 MR. McLAUGHLIN: I think Bill has raised a
22 good point. But the situation where you need extra
23 time to analyze an affidavit of a witness is where
24 they've gone into technical stuff, their analyses on
25 work sharing discounts or carrier costs or something

1 like that that's complex. Those are kind of a special
2 case. But if the witness is just talking about, oh,
3 the marketplace and, oh, you ought to hit that guy and
4 not me or something like that, I'm not sure you
5 require typically a long amount of time to respond to
6 that kind of stuff. And I don't know how you handle
7 the technical stuff. If there is somebody who wants
8 to raise technical issues, it seems to me that if it's
9 a complex technical issue, it ought to be raised as
10 early as possible, perhaps before those comments or
11 the regular comments are due so you won't get into
12 that problem of the other party saying this is
13 outrageous that we're being hit with this very big
14 technical piece so late in the game.

15 MR. KEEGAN: I'm not sure what -- Tim Keegan
16 again. I'm not sure what the basis is for the
17 assumption the parties will not or should not submit
18 alternative proposals until after the hearing.

19 MR. SHARFMAN: I'm happy to say that I've
20 gone through most of my notes already. Is there
21 anything that somebody would like to raise, an issue
22 that someone would like to raise that we haven't
23 touched on so far?

24 MR. TODD: David Taub for MOAA. I mean, the
25 obvious, the big issue here is does the Postal Service

1 need the money and is there a filing of a rate that's
2 in excess of the price caps justified in the statutory
3 criteria. Presumably, that's where all the fire will
4 be concentrated.

5 It's also my understanding, however, that
6 the rates that are proposed by the Postal Service must
7 be in accordance with the objectives and the factors
8 as set forth in the act. What I would urge the Postal
9 Service not to do is start making structural changes
10 within this very limited period in which the parties'
11 role is at best going to be severely limited in the
12 Commission's time just to go through the very basics
13 of this case is going to be all they can handle.

14 This is not the time to be striking out for
15 structural changes within the various classes of mail
16 and subclasses, et cetera, but rather to assume that
17 these rates are going to be -- that the proposed rates
18 will be based upon the vouchers and objectives of the
19 act, but in accordance with what we now have before
20 us. And I would just urge that the Postal Service
21 take that approach in filing the exigent case.

22 MR. STOVER: David Stover, Greeting Card
23 Association. I had one point to make. I don't know
24 the answer. I don't know if there is an answer at
25 this point, but it's somewhat related to Mr. Taub's.

1 As we all know, under the 1970 statute, technical
2 decisions that emerged in rate cases had a way of
3 turning into precedents. The Commission has before it
4 a major rulemaking to decide the fate of one of those
5 famous persons involved in the benchmark example.

6 We are now facing a distinctly bobtailed
7 rate proceeding with rather sketchy procedural
8 opportunities for the parties. And I wanted to
9 suggest that the Commission itself in that 30 days
10 when it is working on its opinion bear in mind the
11 dangers inherent in allowing a technical decision and
12 especially a novel one that emerges in this expected
13 exigency case to become the sort of precedent the
14 technical findings used to become under the old
15 statute when we had 10 months and 50 or 60 witnesses
16 to elucidate the problem before the decision process
17 ended.

18 MR. SHARFMAN: Thank you.

19 MR. MITCHELL: Bob Mitchell, representing
20 myself. There was a suggestion that the Postal
21 Service might want to avoid structural changes in this
22 filing. I want to raise a concern that that might not
23 be a good idea. The Postal Service last year filed no
24 increase at all, and that means that it lost a year
25 and gave up the possibility of making any improvements

1 at that time.

2 The Postal Service has also made a public
3 statement that it will not use any freedom under the
4 CPI to make changes next May. So that's another
5 opportunity lost to make improvements. If one
6 believes that the Postal Service sorely needs to make
7 improvements in its rate structure, if one believes
8 that there is something for the nation to be gained by
9 improvements in rate structure, then if we continually
10 give up opportunities to make those improvements,
11 we'll be perpetually living in the past and will never
12 see the improvements, and I'm not sure that's a good
13 outcome seriously.

14 MR. DEL POLITO: Gene Del Polito, Postal
15 Commerce. At the same time, if you choose to pass up
16 opportunities to make structural improvements, that
17 does not mean that you now have an open door to make
18 those structural changes within the context of an
19 exigency case. An exigency case means you are facing
20 extraordinary circumstances for which you now need
21 money because of that, not to say that I'm going to
22 create a new set of incentives where I'm going to pass
23 up doing what I should be doing at a time when it
24 should be done in order to be able to put myself in
25 the circumstances where I can come before the

1 Commission and say, I'm sorry, I face these same set
2 of circumstances again. By the way, I need the money
3 and on top of that am going to make these structural
4 changes.

5 There has to be a little common sense
6 brought to some of these discussions in terms of what
7 did Congress do, why did Congress do it, and what did
8 they expect? Similar to that, there is the question
9 of whether or not the Commission has the authority to
10 take a look at an exigency case and make a primary
11 determination in its own mind before they even walk
12 into the room we have the right to say whether or not
13 these are exceptional and extraordinary circumstances.

14 If that were not the case that Congress had
15 intended, clearly there would be no reason for an
16 exigency case at all. The Postal Service would come
17 forward and say, we need the money. You're going to
18 say yes, okay, you need the money. Poof, the money is
19 granted. So come on. We're getting a little
20 ridiculous here. I would hope that even though this
21 is the first case where, yes, it may end up in front
22 of a court of law, we don't have to reintroduce every
23 argument that went into postal reform going into this
24 case in order to be able to convince the Commission
25 that the Commission has the authority to do A or B.

1 MR. BRINKMAN: Bob Brinkman. It strikes me
2 it's going to be very important for the Commission to
3 keep this case geared to the issue of a) whether there
4 are extraordinary and exceptional circumstances; and
5 then b) whether the rates follow the standard given
6 that, because if you open it up to anything else, in
7 60 days the whole thing is going to blow apart.

8 MR. SHARFMAN: Thank you. Any others?

9 MR. OLSON: For purposes of knowing how many
10 days of hearings there will be -- Bill Olson,
11 ValPac -- does the Postal Service have any thoughts on
12 the number of witnesses it is going to identify that
13 it wants to share?

14 MR. SHARFMAN: Does the Postal Service want
15 to share anything?

16 MR. TODD: Well, there is not a lot I can
17 say about that right now. I think you might be
18 surprised that it is not going to come -- well, maybe
19 you won't be surprised. It's not going to come close
20 to what we usually file in a general rate case. There
21 are some discrete issues identified in the
22 Commission's rules. We will address those issues that
23 the Commission wants to hear, and you can have a look
24 at those and decide whether, you know, that reduces to
25 five witnesses, four witnesses or even one witness.

1 Mr. Potter can come over himself and do the whole
2 thing. But I really am limited as to what I can say
3 about that right now.

4 MR. SHARFMAN: Anyone else?

5 (No response.)

6 MR. SHARFMAN: Well, I thank you very much
7 for attending, and I think we will be looking at the
8 transcript of this carefully, and we thank you for
9 your help.

10 (Whereupon, at 11:20 a.m., the conference in
11 the above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: PI2010-3
CASE TITLE: Public Inquiries Concerning Procedures
for Rate Cases Under Part 3010, Subpart E
HEARING DATE: June 16, 2010
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Postal Regulatory Commission.

Date: June 16, 2010

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