

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

In the Matter of)
))
Phoebe Putney Health System, Inc.)
a corporation, and))
Phoebe Putney Memorial Hospital, Inc.)
a corporation, and))
) **Docket No. 9348**
Phoebe North, Inc.))
a corporation, and))
))
HCA Inc.))
a corporation, and))
))
Palmyra Park Hospital, Inc.))
a corporation, and))
))
Hospital Authority of Albany-Dougherty)
County.))

ORDER DENYING RESPONDENT’S MOTION TO RESCHEDULE HEARING DATE

Our March 14, 2013 Order Granting Complaint Counsel’s Motion to Lift Stay directed the Chief Administrative Law Judge to set a new hearing date in this matter as soon as practicable, but in no circumstances later than July 15, 2013. On March 19, 2013, Respondents filed a Motion to Reschedule Hearing Date, seeking a new evidentiary hearing start date of “no earlier than December 2013.” On March 21, 2013, Complaint Counsel filed an Opposition to Respondents’ Motion to Reschedule Hearing Date. On March 22, 2013, Respondents filed a Motion for Leave to File Reply Brief In Support of Respondents’ Motion to Reschedule Hearing with an attached Reply Brief.

The Commission has carefully considered the arguments in Respondents' motion and Complaint Counsel's opposition. The Commission has also decided to grant Respondents' Motion for Leave to File Reply Brief and has carefully considered the arguments raised therein as well. For the reasons noted below, the Commission denies Respondents' Motion to Reschedule Hearing Date. As a matter of discretion, however, the Commission will grant a three-week extension of the hearing date. The Chief Administrative Law Judge is directed to set a new hearing date as soon as is practicable, but in no circumstances later than August 5, 2013.

Respondents have not made a showing of good cause under Commission Rules 3.21(c) and 3.41(b) to order a later date for the evidentiary hearing in this matter. First, Respondents' have been well aware of the expedited discovery requirements necessary in this proceeding for over two years. As Complaint Counsel point out, Respondents' July 2011 unopposed motion to stay this administrative proceeding explained that both parties agreed to preserve the filing time allotments for each party granted under the 2011 scheduling order upon restart of the administrative trial. (Unopposed Motion To Stay ¶ 10.) The Commission took this agreement into account in granting the stay. (Order Granting Respondents' Unopposed Motion to Stay Proceedings, July 15, 2011.) Respondents do not make any arguments now that were not foreseeable at the time they filed their unopposed motion to stay the administrative proceeding in July 2011.

Second, for the reasons pointed out by Complaint Counsel, Respondents will have sufficient time to prepare effectively for trial under the terms of this order. The July 15, 2013 hearing date identified in the Commission's March 14, 2013 order lifting the stay already effectively extended the discovery time available to the parties from what was allotted in the original 2011 scheduling order. In addition, Respondents have immediate and ongoing access to the vast majority of witnesses on Complaint Counsel's preliminary witness list (most of whom are Respondents' employees), and most of Complaint Counsel's new witnesses will be Respondents' employees and consultants. This reduces the burden of discovery on Respondents. Respondents have also had a copy of Complaint Counsel's initially filed economic expert report since April 20, 2011, giving Respondents almost two years to analyze it and prepare for rebuttal.

Respondents also argue that because this matter no longer deals with an unconsummated merger, the expedited discovery schedule is no longer necessary. We disagree. Complaint Counsel are correct that the Commission's policy favoring expedited administrative proceedings in merger cases recognizes not only the need to protect the merging parties' interests in obtaining swift resolution of a Commission challenge prior to consummation, but also the need to protect interim competition. As we stated in our order lifting the stay, time is of the essence in this matter due to the acquisition's consummation and the significant amount of time that has already since passed.

Respondents state that they would agree to cease any further integration of the two hospitals if the hearing is rescheduled to a later date that provides sufficient time for all parties to prepare. Respondents do not provide any details on what integration efforts would cease, and how doing so would address the alleged interim harm to competition and consumers from the consummation of the transaction that may already be taking place. Consequently, there is no basis for the Commission to act based on Respondents' representation, and thus no reason for the Commission to depart from its policy of conducting adjudicative proceedings expeditiously. *See* 16 C.F.R. § 3.1; *see also id.* § 3.41(b) ("Hearings shall proceed with all reasonable expedition . . .").

Accordingly,

IT IS ORDERED THAT Respondents' Motion To Reschedule Hearing Date be, and it hereby is, **DENIED**;

IT IS FURTHER ORDERED THAT Respondents' Motion For Leave To File Reply Brief be, and it hereby is, **GRANTED**; and

IT IS FURTHER ORDERED THAT the phrase "in no circumstances later than July 15, 2013" in the second Ordering paragraph in the March 14, 2013 Commission Order Granting Complaint Counsel's Motion To Lift Stay is amended to read "in no circumstances later than August 5, 2013."

By the Commission.

Donald S. Clark
Secretary

ISSUED: April 3, 2013