

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

POSTAL RATE AND FEE CHANGES, 2006

Docket No. R2006-1

OPPOSITION OF THE UNITED STATES POSTAL SERVICE
TO DAVID B. POPKIN MOTION TO COMPEL RESPONSE
TO INTERROGATORIES DBP/USPS-381 AND 413-14
(August 22, 2006)

In accordance with Rule 26(d) of the Commission's Rules of Practice and Procedure, the United States Postal Service hereby responds in opposition to the David B. Popkin Motion to Compel Response to Interrogatories DBP/USPS-381 and 413-14, filed on August 15, 2006. For the reasons presented herein, the Postal Service respectfully requests that Mr. Popkin's motion be denied. The interrogatories will be considered in turn.

DBP/USPS-381

This interrogatory reads as follows:

DBP/USPS-381. Please refer to your response to Interrogatory DBP/USPS-166 subpart a. The response that was provided did not address whether there are any restrictions that exist for setting various cut-off times, such as, must the cut-off time for 2-day Express Mail be no earlier than 5 PM. Please reanswer the original Interrogatory and provide the rationale for your response.

The Postal Service objected to this interrogatory on the grounds of relevance. In his Motion to Compel, Mr. Popkin argues that this interrogatory is relevant to this proceeding solely on the basis that it is "attempting to follow-up" on an "apparently incorrect response" to DBP/USPS-166, which he asserts

“should not be allowed to stand in the record.”¹ Mr. Popkin’s attempt to characterize the Postal Service’s response to DBP/USPS-166 as “apparently incorrect” is, however, completely baseless: that response was correct at the time it was filed and remains correct. Instead, Mr. Popkin is merely dissatisfied with the level of detail provided in that response.² That dissatisfaction does not, however, provide a basis for concluding that the operational details about Express Mail cut-off times sought in this follow-up interrogatory are relevant.

As Presiding Officers in past omnibus rate cases have consistently noted, there is a limit to which the operational details of Express Mail are relevant to such proceedings.³ Presiding Officer’s Ruling No. R97-1/53, for example, states that the Postal Service need only respond to interrogatories that seek “general information” about Express Mail service.⁴ Interrogatory DBP/USPS-166 queried the Postal Service as to how Express Mail cut-off times are established at

¹ See Popkin Motion at 2-3. Specifically, Mr. Popkin states that “[t]he apparently incorrect response that was made to Interrogatory DBP/USPS-166 should not be allowed to stand in the record and the Postal Service should be required to make the appropriate correction and that would make that relevant to this Docket.” *Id.* at 3. The Postal Service can only assume that the second “that” refers to the interrogatory at issue here.

² Indeed, in his Motion Mr. Popkin states as much when he says that the Postal Service’s response did not include information that he thought should be included. See Popkin Motion at 3.

³ See, e.g., POR No. R2005-1/19 at 3 (stating that “a rule of reason limits the extent to which operational details are appropriate for exploration in discovery”); POR No. R2001-1/32 at 4 (stating that the Postal Service is not required to delve into “operational minutiae” concerning a service); POR No. R2000-1/56 at 2, 11 (noting that the Postal Service need not respond to interrogatories that sought “highly specific” details about Express Mail).

⁴ See POR No. R97-1/53 at 5. That Ruling also stated that generally the operational details of Express Mail service are not relevant to § 3622(b)(2) (the “value of service” pricing criterion) in particular and rate proceedings in general. *Id.* at 2, 5.

specific acceptance points. That interrogatory could have been objected to based on the precedent cited above, but the Postal Service instead chose to respond by providing the general considerations that go into the setting of those cut-off times. That answer was fully responsive to the question posed by the interrogatory, at a level of detail appropriate to this proceeding.

Clearly dissatisfied with the level of detail provided in that response, Mr. Popkin has chosen to file the interrogatory at issue here, which seeks further details as to Express Mail cut-off times. When presented with the obvious objection that such operational details concerning Express Mail are simply not relevant to this proceeding, Mr. Popkin then attempts to justify this interrogatory not by demonstrating the relevance of its subject matter to this proceeding, but by arguing that the response to the original interrogatory was “incorrect.” This is a transparent attempt to evade the fundamental issue presented by the Postal Service’s Objection, which is whether the detailed cut-off time information sought by this interrogatory is relevant to this docket.⁵

Based on Commission precedent, the operational information sought in this interrogatory is clearly not relevant. As noted above in footnote 3, a “rule of reason” limits the extent to which Express Mail operational details are relevant to this proceeding.⁶ In this Docket, the Postal Service has provided, in the

⁵ While Mr. Popkin focuses on a particular DMM section in his Motion, the language of the interrogatory (in particular, the use of the words “any” and “such as”) demonstrates that he seeks a wide-ranging response about the setting of Express Mail cut-off times. The relevance of the DMM section cited by Mr. Popkin, or any other information about Express Mail cut-off times, to this proceeding is simply not apparent.

⁶ See POR No. R2005-1/19 at 3.

response that it filed to interrogatory DBP/USPS-166, “general information” concerning how Express Mail cut-off times are set by the field at acceptance points. Any response to this follow-up interrogatory providing further operational details as to the setting of Express Mail cut-off times is manifestly well beyond what is material to the inter-subclass evaluation of the pricing criteria of the Act, including the “value of service” of Express Mail within the meaning of § 3622(b)(2).

DBP/USPS-413 and 414

These interrogatories read as follows:

DBP/USPS-413. Please refer to your response to Interrogatory DBP/USPS-206. Please have the expert on Express Mail advise any reason[s] that he/she is aware of that would allow for one not to consider that the average price per Express Mail article would be the same for those articles that are delivered on time as compared to those that are not delivered on time.

DBP/USPS-414. Please refer to your response to Interrogatory DBP/USPS-207. Please have the expert on Express Mail advise any reason[s] that he/she is aware of that would allow for one not to consider that the average price per Express Mail article would be the same for those articles that are not delivered on time and for which a claim for postage refund was filed as compared to those that a claim for postage refund was not filed for.

The Postal Service objected to these interrogatories on the grounds of relevance. In his Motion, Mr. Popkin completely fails to demonstrate why responses to these interrogatories would provide a material contribution to the record of this proceeding. Instead, his Motion basically just lays out why he considers the interrogatories at issue here to be more appropriate than ones asking the Postal Service to conduct a special study of those Express Mail pieces that fail to meet their service commitment and those pieces that receive a

refund (to the extent that such a study can even be performed). While this discussion demonstrates how Mr. Popkin successfully avoided a burden objection from the Postal Service, it says nothing about how these interrogatories are relevant.

As was noted in the responses to interrogatories DBP/USPS-206 and 207, the Postal Service, including its personnel who focus on the provision of Express Mail service, has not studied the issue of how Express Mail pieces that fail to meet their service commitment may or may not differ from those that meet their commitment, or how failed pieces for which a refund is sought may or may not differ from failed pieces for which a refund is not sought. Responses to these interrogatories would therefore be completely speculative and without factual foundation, and therefore would not provide a material contribution to the record.⁷

Overall, Mr. Popkin fails to demonstrate that responses to these interrogatories would provide information that is relevant and material to this proceeding.⁸ Therefore, the Postal Service requests that the Presiding Officer

⁷ Commission precedent establishes the irrelevance of responses that lack an underlying factual foundation. See POR No. R2005-1/68 at 9-10 (holding that the Postal Service need not respond to an interrogatory where it lacked a factual basis for responding).

⁸ Mr. Popkin claims that he has been prejudiced by what he asserts is the Postal Service's failure to adhere to Commission Rule 26(c) in drafting its Objection. See Popkin Motion at 2. The Postal Service will only note that its Objection clearly and fully stated the *basis* for its objection to this interrogatory (namely, that the questions posed were not relevant to this proceeding), which is all that the Rules require. Indeed, a seasoned participant like Mr. Popkin, who submits numerous interrogatories that the Postal Service is obliged to object to on relevance grounds, knows full well what the Postal Service means when it says that a certain interrogatory is objectionable "on the grounds of relevance": specifically, that the interrogatory runs afoul of Commission Rule 26(a), which states that only those interrogatories that request "non-privileged information

deny Mr. Popkin's Motion to Compel.

Respectfully submitted,

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relevant to the subject matter in such proceeding' shall be answered by a participant. (emphasis added). Mr. Popkin's protestations in this regard are simply not credible.