

PRESIDING OFFICER'S  
RULING NO. R2005-1/30

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

Postal Rate and Fee Changes

Docket No. R2005-1

PRESIDING OFFICER'S RULING  
ON OCA MOTION TO COMPEL  
RESPONSES TO INTERROGATORIES

(Issued June 21, 2005)

On May 19, 2005, the Office of the Consumer Advocate filed a motion to compel responses to seven sections of interrogatory OCA/USPS-7.<sup>1</sup> The pertinent sections pose questions regarding the Postal Service's purported failure to file information from the Origin Destination Information System (ODIS) in response to the requirements of the Commission's periodic reporting rule in 39 CFR § 3001.102 at various times in the past, and also solicit statements of the Service's intentions to file responsive information in the future. The Postal Service objected to all these questions on the ground that they seek to pursue matters related to the Commission's periodic reporting rules, and thus are not calculated to lead to admissible evidence bearing on issues raised by the Service's request in this docket.<sup>2</sup>

In the motion, OCA argues that its questions are calculated to lead to admissible evidence because the ODIS system reports information that reveals the delivery performance actually provided various mail services, and thus bears on their value

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<sup>1</sup> Office of the Consumer Advocate Motion to Compel Answers to Interrogatories OCA/USPS-7.a.- c. and e. - h., May 19, 2005 (Motion to Compel).

<sup>2</sup> Objections of the United States Postal Service to Interrogatories of the OCA (OCA/USPS-7a-c, e-h), May 9, 2005 (Opposition).

under § 3622(b)(2) and their status as available alternatives under § 3622(b)(5). In OCA's view, the Postal Service's failure to provide these data on a quarterly basis has significantly devalued the quality of service of the affected services, which could serve as a distinct ground for reducing their cost coverage. Further, should the Service continue to fail to comply with filing requirements in the future, OCA argues that cost coverages set under the § 3622(b) pricing criteria should reflect that devaluation. OCA expresses a concern that "the Postal Service will develop a pattern of flouting this rule and comply only when it files a request for an omnibus increase in rates under 39 U.S.C. § 3622...."<sup>3</sup>

In an opposition<sup>4</sup> filed on May 26, the Postal Service reiterates its position that the discovery requests in controversy are irrelevant to this proceeding. The Service disputes OCA's claim that the extent of its timely filing under the periodic reporting rule would affect an assessment of value of service under § 3622(b)(2), and notes that it has provided ODIS information for evaluating value of service for ratemaking purposes in its library reference USPS LR K-82 in this docket.

The Service also denies that its failure to file data in response to the periodic reporting rule was an act of defiance. It explains that, as the result of a need to significantly revise the ODIS data system for its merger with the Revenue Pieces and Weight (RPW) system in FY 2004, the Service was unable to resume periodic filing until April 11, 2005. Accordingly, the Service submits that OCA's motion is without merit, "except insofar as it implies, in hindsight, that the Postal Service could have formally notified the Commission as soon as it became apparent that compliance with Rule 102(b)(2) would be temporarily problematic."<sup>5</sup>

Data filed in response to the requirements of the Commission's periodic reporting rules represent a valuable—and in some cases unique—source of information with which to document the Postal Service's performance in a number of areas. As OCA

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<sup>3</sup> OCA Motion to Compel, *supra*, at 4.

<sup>4</sup> Opposition of the United States Postal Service to Motion of the Office of the Consumer Advocate to Compel Responses to Interrogatories OCA/USPS-7. a-c, e-h, May 26, 2005

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

has observed, data from the ODIS system provides useful information about the number of days for actual delivery of First-Class, Priority, and Package Service Mail. While the Postal Service publishes service standards for all these categories, a potential user seeking proof of actual service performance would need the kind of information provided by the ODIS system. Lacking access to such empirical data, a current or prospective user would have no objective basis for assessing the value of the service, as established by actual delivery performance.

For this reason, I cannot accept the Postal Service's categorical claim that its record of filing such information in response to the Commission's periodic reporting rule has no possible relevance in an omnibus rate proceeding. Value of service, as assessed by the user, depends in part on the availability of information with which to make that assessment.<sup>6</sup> All other things being equal, the unavailability of periodically reported empirical data that could be used to assess one germane aspect of service would tend to obstruct consumers' perception of value and thereby influence the perceived value of that service. Therefore, I conclude that properly framed inquiries regarding the Postal Service's responsiveness to the requirements of the periodic reporting rules may lead to the production of admissible evidence, and thus may constitute appropriate discovery in an omnibus rate proceeding.

The OCA interrogatories at issue ask the Postal Service to confirm, and in some instances to explain, non-compliance with periodic reporting requirements; and to state the Service's intentions regarding compliance with quarterly filing requirements in the future. OCA argues that the requested information would bear on the cost coverages for various services that arguably should be reduced because of the devaluation resulting from non-compliance.

In addition to arguing the irrelevance of the questions, the Postal Service responds that there has been no denial of access to ODIS information for evaluating

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<sup>6</sup> As the Presiding Officer found in a ruling in Docket No. R2001-1, consumers' *perceptions* of a service's value (in distinction from objective measures of service features) can constitute information responsive to the § 3622(b)(2) value of service factor. Presiding Officer's Ruling No. R2001-1/20, December 14, 2001, at 3-4.

value of service for ratemaking purposes in this case. The Service also explains the background of its lapses in filing ODIS data while alterations were being made in its data systems, and cites a letter transmitted to the Commission as evidence of its intention to file responsive data on a quarterly basis.<sup>7</sup>

Under the circumstances presented, I find insufficient justification for compelling the Postal Service to produce responses to OCA's interrogatories. As the Service observes, these discovery requests are unlike those at issue in Presiding Officer's Ruling No. 20 in Docket No. R2001-1. With regard to the requested confirmation of the Postal Service's identified lapses in filing ODIS data, statements in the Service's opposition to the motion to compel are an admission of those facts; in any event, the Service's documented filings (or absence thereof) in response to the periodic reporting rule's requirements speak for themselves. Further, in addition to citing Mr. Foucheaux's earlier statement that "[i]n the future, we will transmit the revised QSR after each calendar quarter[,]"<sup>8</sup> counsel for the Postal Service makes representations in the Opposition that explain the circumstances that gave rise to the lapses in compliance. Against this background, compelling the Postal Service to file a *pro forma* response to the OCA interrogatories would add nothing to the factual record. Accordingly, I shall deny OCA's motion.

#### RULING

The Office of the Consumer Advocate Motion to Compel Answers to Interrogatories OCA/USPS-7a. - c. and e. - h., filed May 19, 2005, is denied.

George Omas  
Presiding Officer

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<sup>7</sup> Postal Service Opposition at 1-3; see letter from Daniel J. Foucheaux, Jr. to Steven W. Williams, April 11, 2005, at 2.

<sup>8</sup> Letter of April 11, 2005, *supra*, at 2.