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BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

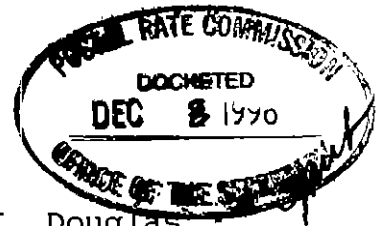
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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

DOUGLAS F. CARLSON
MOTION TO COMPEL RESPONSE TO INTERROGATORY
TO UNITED STATES POSTAL SERVICE
WITNESS LYONS (DFC/USPS-T1-1)

December 3, 1996



Pursuant to § 25 of the Rules of Practice, I, Douglas F. Carlson, hereby move to compel a response to my interrogatory to United States Postal Service witness Lyons (DFC/USPS-T1-1).

Procedural Background

On October 30, 1996, I filed interrogatory DFC/USPS-T1-1, which I characterized as a follow-up interrogatory to the Postal Service's Response to Presiding Officer's Information Request No. 4 (Question 8). The interrogatory explores the basis for witness Lyons' statements concerning boxholder acceptance of the proposed nonresident fee. On November 4, 1996, the Postal Service filed an objection to my interrogatory, claiming that the interrogatory "is not proper follow-up and could have been asked during the normal discovery period on witness Lyons' direct testimony." Objection of the United States Postal Service to Douglas F. Carlson Follow-up Interrogatory to Witness Lyons (DFC/USPS-

T1-1) at 1. In its objection, the Postal Service claims that § 2(D) of the Special Rules of Practice does not allow interrogatories that follow up on POIR's. I did not respond to the Postal Service's objection because I considered § 2(D) to be ambiguous; instead, on November 14, 1996, I filed a variation of my original interrogatory as an institutional interrogatory (see DFC/USPS-6), hoping to obtain an answer via that route. However, on November 25, 1996, the Postal Service filed an objection to my institutional interrogatories. Therefore, I am moving now to compel a response to DFC/USPS-T1-1. I will respond separately to the objection to DFC/USPS-1-6 by December 9, 1996.

Discussion

Section 2(D) provides that "Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown." I believe that a POIR is a discovery request, since it seeks information from another party--the Postal Service--that assists the Commission and participants in evaluating the evidence in the case. Moreover, every participant has a due-process right to cross-examine the Postal Service on statements it makes in response to POIR's. Section 2(D) provides the means for this cross-examination.

The second sentence of § 2(D) admittedly creates ambiguity, since it refers to the "previous interrogatory." This reference may not, however, be intended to allow only interrogatories that follow up on previous interrogatories. For example, an interrogatory that follows up on a request for an admission presumably would be permitted by § 2(D), since a request for an admission is a discovery request. The Postal Service's reading of § 2(D) is too narrow, especially when one considers a participant's due-process right to cross-examine statements made by Postal Service witnesses.¹

The Postal Service also claims that I could have filed this interrogatory during the normal discovery period. Objection at 2. In reality, my question arose from statements that witness Lyons made in the response to the POIR, which the Postal Service filed on October 15, 1996. I could hardly have been expected to have followed up on these statements several weeks before they were made.

Even if § 2(D) does not allow follow-up interrogatories to POIR's, and even if I somehow could have been expected to have filed this interrogatory several weeks before the

¹The Postal Service expressed a concern that allowing follow-up interrogatories to POIR's would create endless discovery against the Postal Service, while the Postal Service must abide by established deadlines in its discovery of other participants. Objection at 2. The Postal Service's concern is not well taken. Follow-up interrogatories, by their very nature, extend beyond the usual deadlines for discovery. Allowing a follow-up interrogatory to a POIR is no different than allowing a follow-up interrogatory to a previous interrogatory, especially when the response to the POIR is filed one month prior to the deadline for completion of discovery against the Postal Service.

statement in question was made, the Commission clearly recognizes participants' due-process right to follow up on a Postal Service witness' response to a POIR. During my recent review of a transcript of the November 18, 1996, hearing, I discovered that the presiding officer informed parties that any participant requiring the opportunity to cross-examine orally the sponsoring witnesses of responses to POIR's or institutional responses "should submit an appropriate motion by November 20, 1996." Tr. 5/1341. Since I was not able to attend the November 18 hearing, I was not aware of this opportunity until I read the transcript on November 29. Had I known, I could have asked orally the questions that the Postal Service refused two weeks earlier to answer in writing.² Clearly, then, the Postal Service would not be prejudiced if the Commission granted my motion to compel, since the Postal Service would have been required to answer my questions orally had I filed such a motion.

Therefore, I request that the Commission grant my motion to compel a response to interrogatory DFC/USPS-T1-1, either because my written interrogatories are a reasonable, nonprejudicial alternative to the oral cross-examination I could have conducted in November, or because § 2(D) of the Special Rules of Practice permits follow-up interrogatories to responses to POIR's.

²Not having participated in a previous case before the Commission, I had no way of anticipating the opportunity for cross-examination that the presiding officer presented at the November 18 hearing.

Respectfully submitted,

Dated: December 3, 1996



DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required participants of record in accordance with section 12 of the Rules of Practice and sections 3(B)(3) and 3(C) of the Special Rules of Practice.

December 3, 1996
Emeryville, California



DOUGLAS F. CARLSON