

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

Before Commissioners:

Michael Kubayanda, Chairman;
Ashley E. Poling, Vice Chairwoman;
Mark Acton;
Ann C. Fisher; and
Robert G. Taub

First-Class Mail and Periodicals
Service Standard Changes, 2021

Docket No. N2021-1

ORDER AFFIRMING PRESIDING OFFICER'S RULING NO. N2021-1/5

(Issued May 20, 2021)

I. INTRODUCTION

This Order concerns an interrogatory labeled as DFC/USPS-T3-3 and propounded to Postal Service witness Stephen B. Hagenstein (Witness Hagenstein) by intervenor Douglas F. Carlson (Mr. Carlson).¹ In response to an objection by the Postal Service to interrogatory DFC/USPS-T3-3 and a subsequent answer by Mr. Carlson,² the Presiding Officer issued Presiding Officer's Ruling No. N2021-1/5, which denied

¹ Douglas F. Carlson Interrogatories and Requests for Production of Documents to United States Postal Service Witness Stephen B. Hagenstein (DFC/USPS-T3-1-12), May 3, 2021, at 2 (Carlson Interrogatories).

² Motion of the United States Postal Service to Be Excused from Responding to Douglas F. Carlson's Interrogatory DFC/USPS-T3-3, May 6, 2021 (Postal Service Motion); Douglas F. Carlson Answer in Opposition to Postal Service Motions to Be Excused from Responding to Interrogatories DFC/USPS-T1-15 and DFC/USPS-T3-3, May 10, 2021 (Carlson Answer).

Mr. Carlson's request that the Presiding Officer withdraw a prior presiding officer's ruling and confirmed that the Postal Service was excused from answering interrogatory DFC/USPS-T3-3.³ On May 17, 2021, Mr. Carlson filed a motion to certify POR No. 5 to the Commission and requested that the Commission direct the Postal Service to respond to interrogatory DFC/USPS-T3-3.⁴ On May 18, 2021, the Presiding Officer certified the questions raised by the Carlson Motion to the full Commission for its consideration and disposition.⁵ For the reasons discussed below, the Commission affirms POR No. 5 and finds the Postal Service should remain excused from answering interrogatory DFC/USPS-T3-3.

II. BACKGROUND AND PROCEDURAL HISTORY

On April 21, 2021, the Postal Service filed a request for an advisory opinion from the Commission regarding planned changes to the service standards for First-Class Mail and end-to-end Periodicals.⁶ To support the Request, the Postal Service included direct testimony by various witnesses, including that of Witness Hagenstein.⁷ Discovery for parties intervening in the proceeding ensued.⁸ On April 30, 2021, Mr. Carlson filed a notice of intervention in this proceeding, and on May 3, 2021, Mr. Carlson submitted interrogatories and requests for production of documents to Witness Hagenstein.⁹

³ Presiding Officer's Ruling Denying Request to Withdraw Presiding Officer's Ruling No. 3, May 12, 2021, at 3 (POR No. 5).

⁴ Douglas F. Carlson Motion to Certify Presiding Officer's Ruling No. N2021-1/5 to the Commission, May 17, 2021, at 8 (Carlson Motion).

⁵ Presiding Officer's Ruling Certifying Presiding Officer's Ruling No. N2021-1/5 to the Commission, May 18, 2021, at 3 (POR No. 8).

⁶ United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, April 21, 2021, at 1 (Request).

⁷ Direct Testimony of Stephen B. Hagenstein on Behalf of the United States Postal Service (USPS-T-3), April 21, 2021.

⁸ Notice and Order on the Postal Service's Request for An Advisory Opinion on Changes in the Nature of Postal Services, April 23, 2021, at 13-14 (Order No. 5875).

⁹ Douglas F. Carlson Notice of Intervention, April 30, 2021, at 1; Carlson Interrogatories at 2-3.

Among the interrogatories to Witness Hagenstein, Mr. Carlson requested that Witness Hagenstein “[p]lease provide quarterly service performance scores for the nation, as distinct from individual districts, from 1998 to the present” in interrogatory DFC/USPS-T3-3. Carlson Interrogatories at 2. On May 6, 2021, the Postal Service filed a motion requesting to be excused from responding to interrogatory DFC/USPS-T3-3.¹⁰ In the Postal Service Motion, the Postal Service moved to be excused on the grounds that the interrogatory “seeks irrelevant information” and “would impose an undue burden on the Postal Service.” Postal Service Motion at 1. Specifically, the Postal Service asserted that “twenty-three years of nationwide quarterly service performance scores . . . [are] irrelevant to evaluate either the Postal Service’s reasons and basis . . . [underlying its request] or whether the Postal Service satisfied the requirements articulated in 39 C.F.R. § 3020.113.” *Id.* at 2. The Postal Service stated that the interrogatory is unlikely to lead to the discovery of admissible evidence, that “the decades of service performance data are irrelevant and excessive,” and that the burden on the Postal Service to produce this data is “significant,” estimating responding to interrogatory DFC/USPS-T3-3 “would take approximately twenty hours to complete.” *Id.* at 3-5.

On May 10, 2021, the Postal Service filed responses to the outstanding Carlson Interrogatories that had not been objected to or withdrawn by Mr. Carlson.¹¹ The same day, the Presiding Officer issued Presiding Officer’s Ruling No. N2021-1/3, which excused the Postal Service from answering interrogatory DFC/USPS-T3-3.¹² In POR No. 3, the Presiding Officer found that “quarterly service performance results since 1998

¹⁰ See generally Postal Service Motion.

¹¹ Responses of the United States Postal Service Witness Stephen B. Hagenstein to Douglas F. Carlson Interrogatories and Requests for Production of Documents DFC/USPS-T3-2, 5-12, May 10, 2021. Carlson previously withdrew the interrogatories for Witness Hagenstein labeled DFC/USPS-T3-1 and DFC/USPS-T3-4. Douglas F. Carlson Notice of Withdrawal of Certain Interrogatories and Requests for Production of Documents to the United States Postal Service, May 6, 2021, at 2.

¹² Presiding Officer’s Ruling Excusing Postal Service from Answering DFC/USPS-T3-3, May 10, 2021, at 2 (POR No. 3).

are well beyond the scope of what the Commission would consider in this docket” and that some of this information is already filed with the Commission. POR No. 3 at 2. The Presiding Officer also acknowledged that “some analysis of historical service performance would be relevant to the proceeding” and therefore took official notice of the Postal Service’s quarterly service reports available on the Commission’s website. *Id.*

Shortly after POR No. 3 was issued, Mr. Carlson timely filed an answer in opposition to the Postal Service Motion. Carlson Answer at 1-2. In his answer, Mr. Carlson claimed that interrogatory DFC/USPS-T3-3 is intended to lead to information that will allow participants to test the Postal Service’s assertion that the changes it proposes in this proceeding will allow the Postal Service “to achieve 95 percent on-time delivery by changing service standards and shifting First-Class Mail from air transportation to ground transportation.” Carlson Answer at 2. Mr. Carlson alleged that changes the Postal Service made to First-Class Mail service standards in 2000 and 2001 were made with similar justifications by the Postal Service and that “[p]articipants need to analyze whether service perfor[m]ance increased after the Postal Service implemented [the change] in 2000 and 2001.” *Id.* Mr. Carlson stated that interrogatory DFC/USPS-T3-3 “will allow for this probative analysis before the Postal Service possibly repeats the same mistakes” and requested that the Presiding Officer withdraw POR No. 3 because the ruling was issued before Mr. Carlson’s deadline to answer the Postal Service Motion expired. *Id.*

On May 12, 2021, the Presiding Officer issued POR No. 5, which denied Mr. Carlson’s request to withdraw POR No. 3 and confirmed that the Postal Service remains excused from answering interrogatory DFC/USPS-T3-3. POR No. 5 at 3. In POR No. 5, the Presiding Officer considered the arguments raised in the Carlson Answer. POR No. 5 at 2, n.6. Finding Mr. Carlson’s arguments “unpersuasive,” the Presiding Officer explained that “[h]ow the Postal Service’s service performance scores changed at a nationwide level 20 years ago are not relevant to this proceeding because the network and processing are significantly different.” *Id.* at 3. He further explained that

“the calculation of service performance and service performance scores have changed, and the mechanisms used to compute those scores have changed.” *Id.* He stated that “the quarterly reports incorporated into the record, per POR No. 3, include sufficient historical data that are more relevant to the shape of the current processing and transportation networks.” *Id.*

III. CARLSON MOTION & POR NO. 8

On May 17, 2021, Mr. Carlson filed a motion to certify POR No. 5 to the Commission and requested that the Commission direct the Postal Service to respond to interrogatory DFC/USPS-T3-3. Carlson Motion at 8. In the motion, Mr. Carlson raises two questions he argues should be certified to the Commission and provides arguments to support his claims that POR No. 5 should be reversed and that the Postal Service should be required to respond to interrogatory DFC/USPS-T3-3.

The first question raised by Mr. Carlson is “whether service performance scores from 1998 to the present are relevant.” *Id.* at 4. In support of his view that the historical service performance scores are relevant to this proceeding, Mr. Carlson states that the Postal Service’s main justification for its proposal in this proceeding is that reducing service standards would both reduce costs and improve reliability. *Id.* According to Mr. Carlson, “[t]he Postal Service’s claim that slower and more reliable service is better than fast service is not new.” *Id.* Mr. Carlson asserts that in 2000 and 2001, the Postal Service changed service standards and suggested at the time “that slower but more consistent delivery was better than fast delivery.” *Id.* Mr. Carlson alleges that the changes currently being proposed by the Postal Service are “a re-run of the changes . . . implemented in 2000 and 2001” and as such “[p]articipants in this docket . . . are entitled to discover and submit evidence evaluating whether a change in service standards two decades ago . . . produced the increase in consistency, or reliability, that the Postal Service promised.” *Id.* at 5.

Mr. Carlson also asserts the Presiding Officer “is mistaken” in the facts he used to support his decision. *Id.* Specifically, Mr. Carlson disagrees that the network and

processing are materially different now than in 2000 and 2001, particularly with regard to the reliability of air and surface transportation and letter mail processing. *Id.* at 5-6. Mr. Carlson also states that the Presiding Officer's point about critical entry times is "unclear" because "[t]he fact that these times may have changed does not in any way undermine the evaluation of service performance before and after the changes in 2000 and 2001." *Id.* at 6. Mr. Carlson also criticizes the Presiding Officer's statement about service performance measurement comparability, stating that Mr. Carlson's intended historical analysis would compare External First-Class Measurement (EXFC) scores to EXFC scores and thus compare scores derived from the same measurement system. *Id.* at 7. Mr. Carlson also takes issue with the Postal Service's allegations of burden, concluding that "this amount of effort is trivial compared to the permanent loss of mail service that the Postal Service's proposal in this docket would cause." *Id.*

The second question raised by Mr. Carlson in his motion is whether POR No. 5 denied him "due process or violated the Administrative Procedure Act." *Id.* Citing to 5 U.S.C. § 556(d), Mr. Carlson states that the Administrative Procedure Act requires a hearing that allows for "such cross-examination as may be required for a full and true disclosure of the facts." *Id.* Mr. Carlson alleges that 39 C.F.R. § 3020.105(b)(2) provided him until May 10, 2021 to respond to the Postal Service Motion. *Id.* at 1. Mr. Carlson asserts that because the Presiding Officer issued POR No. 3 granting the Postal Service Motion before Mr. Carlson's response period had expired, the "premature ruling was a clear violation of [his] right to due process in this proceeding." *Id.* at 2. Further, Mr. Carlson asserts that the Presiding Officer "cited purported facts that are not in the record in this proceeding, that were not offered by either party during the discovery dispute, that are not subject to official notice, and that are not in the Postal Service's direct case." *Id.* at 7. Mr. Carlson alleges he was not provided an opportunity to rebut the Presiding Officer. *Id.* at 7-8.

On May 18, 2021, the Presiding Officer certified the questions raised by the Carlson Motion to the Commission for its consideration and disposition. POR No. 8 at 3.

IV. COMMISSION ANALYSIS

Two questions raised by the Carlson Motion have been certified to the Commission for disposition: (1) whether service performance scores from 1998 to the present are relevant to the instant proceeding; and (2) whether POR No. 5 denied Mr. Carlson due process or violated the Administrative Procedure Act. Carlson Motion at 4, 7; POR No. 8 at 3.

As the Commission stated in Order No. 5875, “Docket No. N2021-1 is limited in scope to the specific changes proposed by the Postal Service in its Request.” Order No. 5875 at 8. In accordance with the Commission’s regulations, “[a]dvisory opinions shall address the specific changes proposed by the Postal Service in the nature of postal services.” 39 C.F.R. § 3020.102(b). Interrogatory DFC/USPS-T3-3 seeks “quarterly service performance scores for the nation, as distinct from individual districts, from 1998 to the present.” Carlson Interrogatories at 2. Mr. Carlson asserts that he intends to use service performance data from both before and after the 2000 and 2001 changes to service standards to assess whether the Postal Service’s main justification in this proceeding that reducing service standards would improve reliability is justifiable. Carlson Motion at 4. He claims that the changes currently being proposed by the Postal Service are “a re-run of the changes . . . implemented in 2000 and 2001” and that he should be “entitled to discover and submit evidence evaluating whether a change in service standards two decades ago . . . produced the increase in consistency, or reliability, that the Postal Service promised.” *Id.* at 5.

Generally, when there is a discovery dispute, the propounding party must establish the relevance of the discovery request. In this case, Mr. Carlson has failed to show the data he seeks and the purpose for which he seeks it is relevant to the instant proceeding. While comparing EXFC scores generated between 1998 and 2018 would use the same measurement system (see Carlson Motion at 7), the Commission finds that the over-20-year-old data that Mr. Carlson seeks to discover is not relevant to this proceeding for several reasons. First, even if the data were to show that service performance reliability decreased after the Postal Service implemented the changes in

2000 and 2001, the Commission does not see the relevance of a change made over 20 years ago and its immediate aftermath to the current proposal before the Commission. That is to say, even if reliability did decrease after the 2000 and 2001 changes, there would be nothing from data Mr. Carlson seeks that would show a similar decrease is likely to occur as a result of the changes the Postal Service is proposing in this docket over 20 years later. Second, even if the data were to show that service reliability decreased following the 2000 and 2001 changes, the data would not show the reasons for such a decrease, and tying any such decrease to the changes in service standards would be speculative at best. In short, the Commission finds that interrogatory DFC/USPS-T3-3 seeks stale historical data that is disconnected from the specific proposal currently before the Commission.

The Commission also notes long-established concerns with service performance data that predate the Postal Accountability and Enhancement Act of 2006 (PAEA).¹³ Prior to the PAEA, “the Postal Service had internal delivery service standards for major types of mail, but lacked statutory guidance on how to establish delivery standards and did not measure and report its delivery performance for most types of mail.” FY 2020 ACD at 96 (citing GAO-06-733 at 2-4). As the Government Accountability Office (GAO) found in 2006, delivery standards were not reflective of “significant changes in the way that mail [was] prepared and delivered” and that “outdated standards [were] unsuitable as benchmarks for . . . measuring delivery performance, or improving . . . oversight, and accountability.” GAO-06-733 at 3. At the time, GAO noted that “less than one-fifth of total mail volume [was] measured” and that “transparency with regard to . . . [the Postal Service’s] overall performance in timely mail delivery [was] limited.” *Id.* at 4. While the Postal Service concentrated service performance measurement on single-piece First-Class Mail, GAO found that “[n]o representative measures of delivery performance—

¹³ See Annual Compliance Determination Report, Fiscal Year 2020, March 29, 2021, at 96 (FY 2020 ACD) (citing United States Government Accountability Office, Report No. GAO-06-733, U.S. Postal Service: Delivery Performance Standards, Measurement, and Reporting Need Improvement, published July 2006, at 2-4, available at <https://www.gao.gov/assets/gao-06-733.pdf> (GAO-06-733)).

measures that can be generalized to an entire class or major type of mail—exist[ed] for . . . bulk First-Class Mail . . . [or] Periodicals . . .” *Id.* The PAEA authorized the Commission to prescribe, by regulation, how the Postal Service would report on the newly created service performance standards.¹⁴ After the PAEA was enacted, it took a number of years for the measurement systems to mature and significant improvements in service performance measurement were achieved.¹⁵ Given the concerns about service performance data that predate the PAEA and the lack of oversight and accountability over such data compared to more recent, post-PAEA service

¹⁴ See 39 U.S.C. § 3652(a), (d-e). Additionally, the PAEA mandated that the United States Postal Service Office of Inspector General perform the critical task of “regularly audit[ing] the data collection systems and procedures utilized in collecting information and preparing such report [on measures of the quality of service]” and required those audits to be submitted to the Commission. 39 U.S.C. § 3652(a).

¹⁵ See Docket No. PI2015-1, Order Approving Use of Internal Measurements Systems, July 5, 2018, at 13, n.31 (Order No. 4697); Docket No. PI2015-1, Errata to Order No. 4697, August 21, 2018 (Order No. 4771); *see also* Docket No. PI2008-1, Order Concerning Proposals for Internal Service Standards Measurement Systems, November 25, 2008, at 1-2 (Order No. 140) (approving the Postal Service’s request to proceed with the development (and eventual use) of internal service measurements based on Intelligent Mail Barcode (IMb) data to track service performance of bulk letters and flats as well as using the DelTrak- and Red Tag-based systems as an interim solution for Periodicals); Docket No. RM2009-11, Notice of Proposed Rulemaking on Periodic Reporting of Service Performance Measurements and Customer Satisfaction, September 2, 2009, at 2 (Order No. 292) (recognizing the transitional needs of the Postal Service and acknowledging that total compliance with the reporting requirements would not be possible until the measurement systems provided accurate, reliable, and representative data); Docket No. RM2009-11, Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurements and Customer Satisfaction, May 25, 2010, at 25-26 (Order No. 465) (finalizing service performance reporting requirements and acknowledging that the capabilities of the measurement systems would continue to evolve); United States Postal Service, Office of Inspector General, Service Performance Measurement Data – Commercial Mail Audit Report, CRR-AR-11-003, September 6, 2011, at 3, 13, available at <https://www.uspsoig.gov/sites/default/files/document-library-files/2015/CRR-AR-11-003.pdf> (determining that the process used to obtain service performance scores for commercial mail was “not effective” due to “significant data quantity, accuracy, and reliability issues,” based on an interim audit conducted from November 2010 through September 2011); United States Postal Service, Office of Inspector General, Service Performance Measurement Data – Commercial Mail Audit Report, CRR-AR-12-005, June 25, 2012, at 3, 11, available at <https://www.uspsoig.gov/sites/default/files/document-library-files/2015/CRR-AR-12-005.pdf> (reviewing the actions of the Postal Service taken to address the issues identified in OIG Rep. No. CRR-AR-11-003 and concluding that service performance measurement data for mail measured with Full Service Intelligent Mail barcodes (IMbs) were “generally reliable,” based on audit conducted from July 2011 through June 2012); Docket No. PI2016-1, Order Enhancing Service Performance Reporting Requirements and Closing Docket, August 26, 2016, at 1-3 (Order No. 3490) (enhancing the reporting requirements imposed on the Postal Service in continuation of the Commission’s monitoring of service performance and assessment of the accuracy, reliability, and representativeness of the underlying data).

performance data regulated by Commission, the Commission notes that much of the data sought by interrogatory DFC/USPS-T3-3 raises questions concerning the accuracy and robustness of such data. Given these limitations, the Commission agrees with the Presiding Officer's decision to take official notice of the Postal Service's quarterly service reports available on the Commission's website. See POR No. 3 at 2.

With regard to the second question raised by the Carlson Motion, the Commission finds that POR No. 5 neither denied Mr. Carlson due process nor violated the Administrative Procedure Act. See Carlson Motion at 7; POR No. 8 at 3. Mr. Carlson's due process concerns stem from the fact that the Presiding Officer granted the Postal Service Motion before Mr. Carlson's response period had expired, which Mr. Carlson claims "was a clear violation of . . . [his] right to due process in this proceeding." Carlson Motion at 2. Mr. Carlson is correct that the Presiding Officer issued POR No. 3 before Mr. Carlson's response period pursuant to 39 C.F.R. § 3020.105(b)(2) had expired. However, any harm caused by the premature issuance of POR No. 3 was cured by the Presiding Officer's consideration of the Carlson Answer in POR No. 5. In POR No. 5, the Presiding Officer expressly considered the arguments raised by Mr. Carlson in the Carlson Answer and entertained Mr. Carlson's request that POR No. 3 be withdrawn. POR No. 5 at 2, n.6. Ultimately, the Presiding Officer found Mr. Carlson's substantive arguments unpersuasive, but that was not until after Mr. Carlson's arguments were considered by the Presiding Officer. *Id.* at 3. Mr. Carlson's substantive arguments have also been further considered by the Commission as a whole in this Order, thereby further discounting his claims of denial of due process.

Mr. Carlson also asserts that the Presiding Officer "cited purported facts that are not in the record in this proceeding, that were not offered by either party during the discovery dispute, that are not subject to official notice, and that are not in the Postal Service's direct case" and claims that he was not provided an opportunity to rebut the Presiding Officer. Carlson Motion at 7-8. However, the Carlson Motion provides extensive rebuttal related to these points. *Id.* at 4-8. Given that the Presiding Officer

certified the questions raised by the Carlson Motion to the Commission for its consideration and disposition and that the Commission has considered the entirety of the Carlson Motion in this Order, the Commission finds that Mr. Carlson has had an adequate opportunity to rebut any issues raised by POR No. 3 and POR No. 5.

The Commission also finds that POR No. 5 did not violate the Administrative Procedure Act. Mr. Carlson appears to argue that the Administrative Procedure Act compels the allowance of interrogatory DFC/USPS-T3-3 in order to allow him to perform “such cross-examination as may be required for a full and true disclosure of the facts.” *Id.* at 7 (citing 5 U.S.C. § 556(d)). However, 5 U.S.C. § 556(d) also states that “the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.” 5 U.S.C. § 556(d). Given that the Commission has found that information sought by interrogatory DFC/USPS-T3-3 lacks relevance to this proceeding, 5 U.S.C. § 556(d) supports the Commission’s affirmation of POR No. 5.

For these reasons, the Commission affirms POR No. 5 and finds that the Postal Service should remain excused from answering interrogatory DFC/USPS-T3-3.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Commission affirms the Presiding Officer’s Ruling No. N2021-1/5.
2. The Postal Service remains excused from answering interrogatory DFC/USPS-T3-3.

By the Commission.

Jennie L. Jbara
Alternate Certifying Officer