

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

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

OPPOSITION OF UNITED STATES POSTAL SERVICE  
TO APMU MOTION TO COMPEL THE PRODUCTION OF INFORMATION RE-  
QUESTED IN INTERROGATORIES APMU/USPS-T34-2, 4-7, 8ac, and 14  
TO WITNESS ROBINSON  
(March 30, 2000)

On March 9, 2000, the United States Postal Service filed objections to interrogatories APMU/USPS-T34-2, 4-7, 8ac, and 14, filed on February 28, 2000. On March 23, 2000, APMU moved to compel responses to same. The Postal Service hereby opposes the motion to compel.

In its motion, APMU develops a creative set of proposed stipulations, which it apparently believes are pertinent to the instant discovery dispute. The Postal Service respectfully declines to so stipulate, because its objections are valid, and the stipulations have little to do with its objections. Instead, the Postal Service urges the Commission to follow its customary practice of focusing on the information sought, and assessing the validity of the relevance and commercial sensitivity objections that the Postal Service has raised. If this procedure is followed, it is clear that the APMU motion must be denied.

**Interrogatory 2**

Interrogatory 2 asks a series of detailed questions regarding Emery's PMPC operations, such as number of planes, amount of lift capacity, use of lift capacity, and conditions under which Emery hands mail off to the Postal Service for transportation on commercial flights. Part (e) asks for the amount of any fuel surcharge contained in the contract. Despite APMU's protestations, it is clear that the Postal Service's costs under

the Emery contract, and the Priority Mail rates based upon these costs, do not depend upon the number of planes, amount of lift capacity and the like. The basic structure of the contract, seen in Docket No. R97-1, USPS-LR-H-235, is plain. The charges are per piece, by shape, by city-pair, and other factors, such as performance incentives, not at issue in APMU's questions. Under this contract, the Postal Service generally does not control how Emery is to structure its operations, how many planes it must employ or in what fashion it must to employ them, nor does the Postal Service concern itself with how much lift capacity Emery might employ (whether in the Northeast, Florida, or anywhere else). This contract structure has not changed. Under these circumstances, the only relevant cost figure for the test year is the aggregate, national projected cost for the PMPC portion of Priority Mail costs, which stands wholly apart from the detailed operational information sought by APMU.

Furthermore, it does not require lengthy discussion to show that the type and amount of capital equipment employed by Emery in its operations, and how that equipment is used both in PMPC and non-PMPC operations, are not the type of information that any rational business normally would disclose to the public. The Postal Service, consistent with its other objections regarding PMPC pricing and operations information, intends to protect such information from disclosure and urges the Commission to join in that effort, especially in these circumstances, in which the information would shed no light on the matters at issue.<sup>1/</sup>

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<sup>1/</sup>The only part of Interrogatory 2 having any arguable bearing on the issues is part (e), regarding fuel surcharges thought to be passed through to the Postal Service. Consistent with its prior objections, the Postal Service objects to provision of specific prices under the contract, including fuel charges. If such information is order to be disclosed, however, such disclosure should be made subject to strict protective conditions.

The heart of APMU's motion seems to be the argument that this operational information is related to Emery's costs, which are indirectly related to the Postal Service's costs, and that APMU should be allowed to inquire into operational details of Emery's operation in an effort to expose inefficiencies and postulate remedial actions likely to be taken when the contract expires.<sup>2/</sup> APMU Motion at 5. Even if it were not the case that the contract will expire on February 23, 2002, after the test year, and even if APMU's unsupported supposition that any future negotiation would concern operational details such as those at issue here, the prospect that the APMU questions might give rise to information that could be used to speculate about hypothetical future cost containments is far too slender a reed upon which to compel the production of sensitive business information concerning operational details beyond the scope of this proceeding.

**Interrogatories 4, 5, 6, 7 and 14**

Interrogatory 4 again asks for detailed operational information, this time concerning the capacity utilization and mode of transportation used by the contractor to transport Priority Mail between PMPCs, and times and conditions under which other types of mail *and non-mail* items may be carried on the contractor's intra-regional PMPC transportation. This operational information is no more relevant to Priority Mail costs and rates than that requested in question 2. This is especially true with respect to the manner in which Emery uses its equipment to transport non-mail cargo having nothing to do with this proceeding. Under the PMPC contract, operational details such as these have no bearing on the costs incurred by the Postal Service in the base year or test year.

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<sup>2/</sup>APMU bases its argument on the false assertion that " the Emery contract will expire next year during the pendency of the period in which the requested rates will be in effect." APMU Motion at 5. In fact, the contract will expire on February 23, 2002, beyond the test year in this case.

Furthermore, it is clear that the answers to these questions would reveal commercially sensitive information of the contractor.

Interrogatory 5 is similarly objectionable. This interrogatory asks whether the contractor provided transportation by ground or by air between five specific city pairs. Not only is the mode of transportation under the PMPC contract irrelevant to Postal Service costs, but information regarding particular city pairs is irrelevant to the issues in this case. The Postal Service does not propose, and would not accept, a Priority Mail rate structure that offered specific rates for each of the city pairs in question. Moreover, whether Emery decides to employ ground or air transportation between these sites is an internal business decision of the contract, regarding which neither the Postal Service nor the Commission have any role. Even if the Emery were not involved, and strictly Postal Service operations were at issue, this detailed level of operational information would have little bearing on the Commission's deliberations.

Interrogatory 6 is similarly defective. This question asks for an explanation of how Priority Mail originating in specific cities is transported to a PMPC, including details of route followed, mode of transport and provider of transport. Even if no contractor were involved, these operational details would be beyond the proper scope of this proceeding. Given that the contract charges to the Postal Service do not depend on such specifics, the irrelevance is compounded. The Commission must conclude that this business information, which is not of the type normally disclosed by rational business entities, should not be disclosed, both because of its commercial sensitivity, and because of its irrelevance.

Interrogatory 7 shares that same infirmities as its predecessor. This question seeks an explanation of how Priority Mail that originates outside the areas served by the PMPCs and addressed to each of the five cities listed in interrogatory 6 would be transported, including identification of specific facilities to which the mail would flow.

Again, how this particular mail is transported is an operational detail so far removed from the issues in this case, and from the Commission's proper functions, that its disclosure cannot reasonably be compelled. The Postal Service also maintains that the facility/city specific information sought is commercially sensitive information of both the Postal Service and its contractor.

Interrogatory 14 seeks information on the degree to which particular PMPCs are mechanized, and information regarding Emery's plans to invest in such equipment. Surely this interrogatory illustrates the total disconnect between APMU's questions and any "information calculated to lead to the discovery of admissible evidence." The degree of mechanization in Emery's plants is a factor clearly divorced from the Postal Service's incurrence of costs under the contract, and has not been shown by the requesting party to bear on any issue other than irrelevant, post-test-year hypothetical cost avoidance actions predicted by APMU. Moreover, Emery's automation plans are its to disclose or not disclose, and the Postal Service has no control over this commercially sensitive business intelligence. Even if the Postal Service were compelled to produce such information, the Postal Service is uncertain whether such information would be forthcoming from its contractor.

**Interrogatories 8a and 8c**

Interrogatories 8a and 8c ask for performance data on the "tail of the distribution" for First-Class and Priority Mail, showing by what degree specific service standards were not met. The Presiding Officer has ruled in a similar context that the relevance of such finely detailed performance data is so slight as to be outweighed by potential commercial harm of disclosure, even under protective conditions. "The relevance of more finely detailed data is not apparent; as the Postal Service suggests, in the time-sensitive expedited delivery market 'late is late.'" Docket No. R94-1, Presiding Officer's Ruling No. R94-1/22. For purposes of this proceeding, the aggregate performance

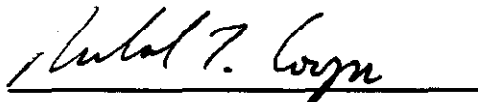
data provided by the Postal Service is sufficient for the Commission to evaluate value of service arguments, and no additional information is needed. Since APMU has stated no reason why the prior ruling to this effect should not apply to its request, its motion should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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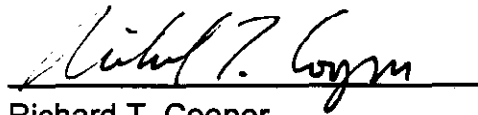


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March 30, 2000

#### CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



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