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PRESIDING OFFICER'S
RULING NO. R2000-1/51

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Postal Rate and Fee Changes

Docket No. R2000-1

PRESIDING OFFICER'S RULING GRANTING IN PART
MOTIONS OF ASSOCIATION OF PRIORITY MAIL USERS
TO COMPEL UNITED STATES POSTAL SERVICE TO PRODUCE
INFORMATION REQUESTED IN INTERROGATORIES
DIRECTED TO WITNESS MAURA ROBINSON (USPS-T-34)

(Issued April 26, 2000)

This ruling addresses two motions filed by intervenor Association of Priority Mail Users, Inc. (APMU) to compel the Postal Service to provide information responsive to a number of interrogatories (or parts thereof) directed to witness Robinson.¹ Generally, the interrogatories seek information on which the witness apparently did not directly rely in preparing her testimony. Because of their number and variety, the following discussion groups the interrogatories at issue by the subject matter of the information sought in them.

Details of PMPC network operations. Six of APMU's interrogatories seek details of the operations of the Priority Mail Processing Center (PMPC) network performed by Emery Worldwide Airlines (Emery), the contractor: planes and lift capacity provided by

¹ Association of Priority Mail Users, Inc. Motion to Compel United States Postal Service to Produce Information Requested in Interrogatories APMU/USPS-T34-2, 4, 5, 6, 7, 8a, 8c, and 14 to Witness Maura Robinson, March 23, 2000; Association of Priority Mail Users, Inc. Motion to Compel United States Postal Service to Produce Information Requested in Interrogatories APMU/USPS-T34-33, 34, 35, 36, 37, 38, 39, 41, and 42 to Witness Maura Robinson, March 31, 2000.

Emery and others for carriage of Priority Mail and other matter (APMU/USPS-T34-2); specific details of transport provided in Florida and the Northeast (APMU/USPS-T34-4); whether Emery provides air or ground transport between five specified city pairs (APMU/USPS-T34-5); specifics of the transport of Priority Mail from five named cities to the PMPC (APMU/USPS-T34-6); how Priority Mail would be transported from outside PMPC service areas to the same five cities (APMU/USPS-T34-7); and what flat sorting equipment, if any, is used to sort Priority Mail flats at each PMPC site (APMU/USPS-T34-14).

The Postal Service objected to these interrogatories primarily on the ground of relevance arguing that, "operational details such as these are solely the concern of the contractor, and have no bearing on the costs incurred by the Postal Service in the base year or test year." Objection of March 9, 2000, at 1. To the extent the interrogatories seek city- or facility-specific information, the Service also objects on the ground of commercial sensitivity. The Service expands upon the same objections in an Opposition filed on March 30.²

In its Motion of March 23, APMU argues that the requested information is relevant because Emery's costs of operating the PMPC network, with the consequent expenses to the Postal Service under its contract with Emery, "are the costs driving the Postal Service's substantially above-average rate increase request for Priority Mail" Motion at 3. Further, APMU argues that, "[t]he issue is whether these extraordinary cost increases are about to come to an end. The Postal Service can be expected to take decisive action to control its costs at the end of the current PMPC contract[.]" justifying APMU's intended argument "that Priority Mail rate increases be tempered due to the expectation that Priority Mail costs soon will be brought under control." Id. at 5. APMU also argues that the Postal Service has not carried its burden of showing

² Opposition of United States Postal Service to APMU Motion to Compel the Production of Information Requested in Interrogatories APMU/USPS-T34-2, 4-7, 8ac, and 14 to Witness Robinson, March 30, 2000.

specifically that release of the requested information would lead to commercial harm. Id. at 6-7.

While the logic of APMU's primary argument—that Emery's costs of operating the PMPC network ultimately translate into Postal Service costs of providing Priority Mail service—is unassailable, the relevance of the requested operational details is difficult to identify. Emery's PMPC operations presumably are geared toward performing its obligations under the contract with available resources while attempting to maximize its profit under the contract's price schedules. If identified, the specific methods used by Emery to operate the PMPC network might be critiqued, and might even be shown to be inefficient, but that knowledge would have no direct bearing on the portion of Priority Mail costs associated with the PMPC contract, which are the product of negotiation. Consequently, absent an apparent nexus between the information sought and an issue to be decided in this case, I shall not compel its production by the Postal Service.

Information on Priority Mail and First-Class Mail delivery performance. Five APMU interrogatories, or portions thereof, request specific information on delivery performance: APMU/USPS-T34-8(a) and (c) seek data on the "tail" (latest-arriving portion) of the delivery distribution for First-Class Mail and Priority Mail with overnight, two-day, and three-day delivery standards. APMU/USPS-T34-33, 34, 35, and 36 request the percentages of Priority Mail meeting applicable service standards that originate and have destinations within, outside, into, and out of the PMPC network for each quarter of FY 1999.

The Postal Service objected to these requests on the ground of relevance, arguing that such finely detailed performance data are unnecessary, and that separate performance data for Priority Mail travelling inside or outside the PMPC network is irrelevant to the overall value of service for the subclass and would add little to the record of this case. The Service also objects on the ground of commercial sensitivity, and cites rulings in earlier cases for the principle 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.” Postal Service Objection of March 9, 2000, at 2-3.

In its motions, APMU argues that the requested information “is clearly relevant because performance data has always been considered by the Commission in setting coverages.” Motion of March 23 at 6. More particularly, APMU claims that a finer breakdown of service performance results “is particularly useful because it will allow a comparison between PMPC Network and non-PMPC Network Priority Mail[,]” which it argues “is relevant to assessing whether the costs specific to the PMPC Network system derive any justification from the level of delivery performance and to anticipating whether the Postal Service is likely to extend the PMPC Network contract.” Motion of March 31 at 5-6. According to APMU, these are germane considerations because the Service has represented that the PMPC contract was awarded to test the potential for improving Priority Mail delivery time, and one Postal Service witness has represented that the PMPC system has produced measurable improvements in Priority Mail service. However, because the PMPC contract makes up a significant portion of the costs attributed to Priority Mail, and it will lapse during the period that rates recommended in this case will be in effect, APMU argues that “the Commission should not be deprived of information that would be relevant in the likely event that the Postal Service acts to control Priority Mail costs.” *Id.* at 6.

As the Commission has held,³ and the parties recognize, delivery performance data about different postal services constitute one important factual resource for determining value of service under § 3622(b)(2). Relevant information may include delivery performance data for a single subclass, or data that enable a comparison of the performance of different services.

Notwithstanding the degree of detail requested in APMU/USPS-T34-8(a) and (c), I find they seek information that appears reasonably calculated to lead to the production

³ See Presiding Officer’s Ruling No. R2000-1/41 at 5, *citing* PRC Op. R97-1, Vol. 1, para. 5308.

of admissible evidence under §§ 25(a) and 26(a) of the rules of practice, and I shall order the Service to produce whatever responsive information may be available. Unlike the controversy regarding Express Mail delivery performance in R94-1,⁴ which the Service cites in its Opposition, APMU's interrogatories here seek data beyond the information already produced by the Service that may enable a more complete assessment of the comparative performance of First-Class Mail, a monopoly service, and Priority Mail, which is both an extension of that subclass and a competitive offering characterized as a more expedited service. Information concerning the last-arriving segments of the two subclasses may augment an analysis of their comparative values of service.

Because Priority Mail is a competitive service, I recognize that the Service regards detailed delivery performance data as potentially commercially sensitive. Inasmuch as APMU/USPS-T34-8(c) seeks data for Priority Mail generally, not geographically-specific results, I find no potential for harm in public disclosure of responsive information. Indeed, the Postal Service has already provided comparisons of quarterly EXFC and PETE overnight service performance results in responding to one question posed in Presiding Officer's Information Request No. 6 in this case.⁵

However, I find no such direct connection between the information requested in APMU/USPS-T34-33 through -36 and issues to be decided in this case. Information distinguishing Priority Mail delivery performance within and outside the PMPC network would have little if any bearing on overall value-of-service considerations. Moreover, the putative relationship between different (presumably inferior) delivery performance results involving the PMPC network and specific Priority Mail cost levels appears to be too tenuous to warrant compelling the production of this detail information.

⁴ Presiding Officer's Ruling No. R94-1/22. June 3, 1994.

⁵ See Response of the United States Postal Service to Presiding Officer's Information Request No. 6, Question 9, April 14, 2000.

Information on USPS payments to Emery. Three APMU interrogatories seek information about Postal Service payments to Emery in connection with the PMPC contract: the amount of additional payment, if any, negotiated for calendar year 1999 network operations in excess of the original contract rate (APMU/USPS-T34-38); a detailed explanation of why the Service finds it beneficial for Emery to pay commercial airlines at rates higher than under the USPS air system contract (APMU/USPS-T34-39); and an estimate of the additional costs attributed to Priority Mail in the test year in excess of the amount that would be attributed if the same volume were processed in-house by the Postal Service ((APMU/USPS-T34-41).

The Postal Service objected to the first interrogatory on the ground that it seeks confidential, commercially sensitive business information, but also stated its willingness to provide a response under strict protective conditions. With respect to the second, the Service objected on the grounds that it intrudes into managerial prerogatives of the Postal Service, and that it seeks confidential, commercially-sensitive information irrelevant to test-year and base-year costs. The Service objects to the third interrogatory on the ground that it seeks hypothetical, unrealistic cost figures irrelevant to actual and projected costs at issue in this proceeding.⁶

In its Motion to Compel, APMU argues that the requested payment and cost information is relevant to determining the proper levels of cost associated with the PMPC network, and to the likelihood of the contract's extension in view of the costs that have been associated with it. APMU also argues that the Postal Service has not made a sufficient showing of good cause to justify production under protective conditions, and has not addressed the question of what conditions would be just under the circumstances.

I agree with APMU that the information requested in these interrogatories is relevant to the costs incurred by the Postal Service—which are ultimately to be

⁶ Objection of United States Postal Serviced to APMU Interrogatories APM/USUS-T34-33-39, 41-42 to Witness Robinson, March 17, 2000.

recovered in Priority Mail rates—under the PMPC contract. The amount of the additional payment associated with the final adjustment for calendar year 1999 may be useful for updating estimates of Priority Mail costs associated with the PMPC contract. An explanation of the provision allowing Emery to purchase transportation on commercial airlines at what may be unfavorable rates may shed light on the viability of this approach to purchasing transportation for Priority Mail. And although an estimate of the comparative costs of in-house processing of Priority Mail versus PMPC network costs would necessarily depend on the assumptions and judgmental choices used to produce it, the result of this effort could shed light on future Priority Mail processing operations and their cost consequences.

I also disagree that responses to APMU/USPS-T34-38 and 39 would involve disclosure of privileged materials that should be produced only under protective conditions, or not at all. Inasmuch as the final payment adjustment for 1999 is a fixed dollar amount, reporting it (and the amounts associated with volume increases and changes in mail mix) would not reveal any sensitive details of the contract's terms. Similarly, providing an explanation for a transportation arrangement apparently found to be acceptable in a past negotiation would not trench upon the Service's current or future exercise of managerial prerogatives, nor would it intrude upon any internal matter that does not merit scrutiny in a public rate proceeding. Consequently, I shall direct that the Postal Service provide public responses to these interrogatories.

Information in Inspector General reports and audits. Two APMU interrogatories seek analyses produced by the Postal Service's Inspector General concerning Priority Mail. APMU/USPS-T34-37 asks the Service to provide a copy of the September 24, 1999, report *Priority Mail Processing Center Network* as a library reference. APMU/USPS-T34-42 requests production of copies of any other Inspector General audits or reports on Priority Mail as library references, including both those already released and any that may be released before the record is closed in this proceeding.

The Postal Service objects to providing the September, 1999 report in full on the ground that in unredacted form it would disclose commercially sensitive information.⁷ It also notes that a redacted version of the report has been released pursuant to a Freedom of Information Act request. Regarding other Inspector General reports or audits, the Service objects on the grounds of overbreadth, undue burden (involving 15 to 25 person hours), and because production would disclose proprietary, commercially sensitive, and otherwise privileged information. Moreover, the Service notes that it has already provided an index of audits by both the Inspector General and the Inspection Service in response to other interrogatories. Objection of March 17 at 1-2, 3-4.

In its motion of March 31, APMU argues that audits and reports on Priority Mail performed by the Inspector General "are obviously relevant to assessing the cost and performance data the Postal Service is proffering as the basis of its request for a disproportionate increase for Priority Mail rates." Motion at 7. In response to the Postal Service's claim of undue burden with regard to APMU/USPS-T34-42, APMU expresses doubt about its credibility, but states it is willing to narrow the request to reports subsequent to the September, 1999 report on the PMPC Network. *Id.* at 10. APMU also challenges the Service's claim of commercial sensitivity, arguing that, "[t]he fact that an audit may reveal that costs are high and service is below par is no justification to withhold this information." *Id.* at 9. Additionally, APMU argues that the Postal Service has failed to support its claims of other potential privileges by identifying the specific responsive material it considers privileged and specifying the applicable privilege in each instance. *Id.* at 10-11.

⁷ The Postal Service also notes that Interrogatories APMU/USPS-T34-39 through -41 "appear to contain information [from the report] not made publicly available by the Postal Service." For this reason, the Service objects to providing answers to these questions (with the exception of APMU/USPS-T34-40) "without the provision of specific information regarding the means by which redacted information was obtained by the questioning party." Objection of March 17 at 2.

In its motion of March 31, APMU states that the information cited by the Service came from a document appearing to be the report, which it had obtained before this proceeding commenced, and that it had no information as to what may have been redacted in any other disclosure of the report. Motion at 11.

I agree that the analyses of the Inspector General concerning Priority Mail requested in the two interrogatories are potentially relevant to cost and value of service issues in this case, and I shall direct the Postal Service to provide responses. In order to accommodate the Service's concerns regarding commercial sensitivity, it shall respond to APMU/USPS-T34-37 by submitting as a library reference a copy of the September, 1999 report in the redacted form in which it was provided in response to the FOIA request to which the Service's pleading refers. With regard to the other audits and reports requested in APMU/USPS-T34-42, I find that the Postal Service has failed to identify and provide adequate support for its claims of privilege, and that the burden of producing this material is inconsequential. Consequently, I shall direct that the Postal Service produce any responsive material in a library reference to be filed with the Commission.

RULING

1. The Association of Priority Mail Users, Inc. Motion to Compel United States Postal Service to Produce Information Requested in Interrogatories APMU/USPS-T34-2, 4, 5, 6, 7, 8a, 8c, and 14 to Witness Maura Robinson, filed March 23, 2000, is granted with respect to Interrogatories APMU/USPS-T34-8a and -8c.

2. The Association of Priority Mail Users, Inc. Motion to Compel United States Postal Service to Produce Information Requested in Interrogatories APMU/USPS-T34-33, 34, 35, 36, 37, 38, 39, 41, and 42 to Witness Maura Robinson, filed March 31, 2000, is granted with respect to Interrogatories APMU/USPS-T34-37, 38, 39, 41, and 42, as specified in the body of this ruling.

3. The Postal Service shall submit responses as directed above by May 5, 2000.


Edward J. Gleiman
Presiding Officer