

RECEIVED
PRESIDING OFFICER'S
RULING NO. R2000-1/116

AUG 11 2 55 PM '00

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

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Postal Rate and Fee Changes

Docket No. R2000-1

PRESIDING OFFICER'S RULING
ON MAJOR MAILERS ASSOCIATION'S
AUGUST 7, 2000 MOTION TO COMPEL

(Issued August 11, 2000)

On August 7, 2000, Major Mailers Association (MMA) filed a motion to compel the Postal Service to answer interrogatories and to provide update information consistent with information provided in response to Order No. 1294.¹ The Postal Service filed an opposition to the MMA motion on August 10, 2000.² The answers to interrogatories, and update information issues are independent and shall be discussed separately. The motion to compel answers to interrogatories is denied. The motion to compel update information is granted.

Motion to Compel Answers to Interrogatories. MMA moves to compel the Postal Service to provide answers to Interrogatory MMA/USPS-T24-23(c)-(l).³ The multi-part interrogatory, filed on July 24, 2000, inquires into witness Miller's qualifications, his position on unit cost differences between workshare letters and BMM letters, and mailer activities related to platform operations costs.

¹ Motion of Major Mailers Association to Compel Answers to Interrogatories and Request for Order Directing the Postal Service to Provide Necessary Update Information (filed August 7, 2000).

² Opposition of the United States Postal Service to Major Mailers Association Motion to Compel Answers to Interrogatories and Provide Information Update (filed August 10, 2000).

³ See Major Mailers Association's Additional Interrogatories to USPS Witness Michael W. Miller (filed July 24, 2000).

The Postal Service objected to answering the interrogatory on August 1, 2000. The Service states the questions are not "institutional," but pertain to the direct testimony of witness Miller. The deadline for filing interrogatories pertaining to witness Miller's direct testimony was March 23, 2000. Thus, the Postal Service argues that the MMA interrogatories are untimely.

In its motion, MMA alleges that the Postal Service objection was filed one day out of time. Therefore, the MMA motion to compel should be granted for this reason alone. MMA also argues that the motion should be granted on substantive grounds. MMA characterizes the interrogatory as an attempt to explore "changes" in witness Miller's original position on relevant workshare cost savings in light of subsequent events, and to "confirm" his current position on this matter. Further questions seek to explore platform operations issues and to explore witness Miller's qualifications.

The Postal Service opposition to the motion reiterates the Service's position that the interrogatory is untimely. It characterizes the questions as generic in nature that seek no objective or factual information. Furthermore, the questions are not inextricably tied to the FY 1999 cost data recently provided.

Analysis. Commission Rule 26(c) states that objections to interrogatories shall be filed and served within 10 days of the service of interrogatories. The Postal Service filed its objections within 8 days of the date the interrogatory was filed. Thus, the Postal Service objection is timely.

The MMA argument on substantive grounds is not persuasive. The first question asks witness Miller's position on unit cost differences between workshare letters and BMM letters. Two of the questions ask about witness Miller's qualifications. Seven of the questions ask about mailer activities related to platform operations costs. It is not apparent why each of the questions could not have been asked during the regular interrogatory period. As the Postal Service stated in its objection, the time for filing interrogatories on witness Miller's direct testimony has expired, making these interrogatories untimely. Thus, the motion to compel a response to interrogatory MMA/USPS-T24-23(c)-(l) is denied.

Motion to Compel Update Information. MMA moves to compel the Postal Service to provide updates to library references LR-I-137, LR-I-146, LR-I-147, LR-I-160, and LR-I-162. MMA states that without this additional information, MMA will not be able to complete its analysis of the Postal Service's update filings and prepare an update of its own presentation.

The Postal Service opposition to the motion states that Order No. 1294, requiring a basic update, did not anticipate that all aspects of the case would be updated to incorporate the FY 1999 data. The Postal Service used its judgement to delineate "between those aspects of the case that could usefully and feasible be updated, and those aspects of the case for which a record based on FY 1998 remains an adequate foundation for test year estimates." The Service contends that the exclusive and undue burden of providing the updates may impact its due process rights because of the time constraints for filing rebuttal testimony, and the already tight briefing schedule. Thus, the MMA motion should be denied.

Analysis. Order No. 1294 directs the Postal Service to prepare a basic update to test year forecasts and allows the Service to incorporate with this information such other updates as it believes will more accurately forecast test year results. Presiding Officer's Ruling No. R2000-1/71, revising the procedural schedule, contemplates the need for participants to analyze and incorporate the Postal Service update information into their own proposals. Order No. 1294 attempts to balance the burden that the update places on the Postal Service with the rights of the parties to have sufficient data to update their own testimony. The Postal Service had to exercise its best judgement in complying with this Order and striking the proper balance. This implies that issues concerning where the Postal Service drew the line for determining what needed to be updated beyond the basic update would have to be resolved on a case by case basis.

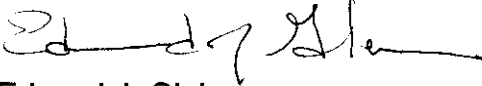
MMA states that it is not able to update its testimony without updates to certain library references. Thus, not providing the updates may adversely affect MMA's ability to participate in this rate case. The Postal Service has not indicated that it would be unduly burdensome to perform the update on the requested library references. The

Service has expressed a burden caused by schedule constraints. This is understandable, but most participants and the Commission are facing similar time constraints at this point in the case. This motion is decided in favor of MMA by balancing the burden upon the Postal Service against MMA's ability to update its testimony and the impact on MMA's participation in this case. The Postal Service shall provide updates to library references LR-I-137, LR-I-146, LR-I-147, LR-I-160, and LR-I-162 by August 18, 2000.

Because of the schedule time constraints, MMA can only be allowed a limited amount of time to incorporate this information into its testimony. MMA shall be prepared to file any testimony impacted by the updated material by August 23, 2000.

RULING

1. The Motion of Major Mailers Association to Compel Answers to Interrogatories and Request for Order Directing the Postal Service to Provide Necessary Update Information (filed August 7, 2000) concerning the motion to compel answers to interrogatories is denied.
2. The Motion of Major Mailers Association to Compel Answers to Interrogatories and Request for Order Directing the Postal Service to Provide Necessary Update Information (filed August 7, 2000) concerning update information of library references LR-I-137, LR-I-146, LR-I-147, LR-I-160, and LR-I-162 is granted. The updated library references are to be provided by August 18, 2000.
3. MMA shall be prepared to file any testimony impacted by the updated material by August 23, 2000.


Edward J. Gleiman,
Presiding Officer