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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. R2001-1/7

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

Postal Rate and Fee Changes

Docket No. R2001-1

PRESIDING OFFICER'S RULING
GRANTING, IN PART, OCA MOTION TO COMPEL

(Issued November 7, 2001)

The Office of the Consumer Advocate (OCA) seeks to compel the Postal Service to provide responses to two customer satisfaction surveys conducted on behalf of the Postal Service.¹ The surveys, U.S. Postal Service Customer Satisfaction Survey (Residential Survey) and U.S. Postal Service Business Customer Satisfaction Survey (Business Survey), seek customer input on a variety of issues that assess the respondent's perception of the quality of postal service, e.g., as relates to mail received, mail sent, and the Postal Service's overall performance. The motion is granted, in part.

Background. The Postal Service objects, in part, to OCA/USPS-7 on two grounds.² First, it argues that the survey results, with few exceptions, "are irrelevant to the determination of rates and fees" because the customer input requested is not class specific. *Id.* at 2-3. Second, the Postal Service contends that the survey results are commercially sensitive. *Id.* at 3-4.

The OCA takes exception to the Postal Service's position that the survey results must be class specific to be relevant, noting that most questions relate to the quality of

¹ Office of the Consumer Advocate Motion to Compel Production of Documents Requested in OCA/USPS-7, October 23, 2001 (OCA Motion).

² Partial Objection of the United States Postal Service to the Office of the Consumer Advocate's Interrogatory OCA/USPS-7 and Joint Motion for Protective Conditions, October 9, 2001 (Postal Service Objection). The Postal Service did not object to providing a copy of the survey forms. In addition, it agreed to provide certain Business Survey results subject to protective conditions. *Id.* at 1, 4.

services being rendered by the Postal Service. OCA Motion at 1-3. OCA argues that the results are germane to several issues in this proceeding, including the contingency and markup. *Id.* at 3-5. The OCA notes that it intends to incorporate the survey results into testimony concerning the contingency. *Id.* at 5, 6.

The Postal Service responds that the OCA's motion has neither a factual foundation nor a rational basis.³ The Postal Service dismisses OCA's contention that the customers' perceptions have any bearing on the contingency. Postal Service Response at 1-3. In a similar vein, the Postal Service characterizes any potential testimony on the point as singularly unconvincing. *Id.* 3-4.

Discussion. The Postal Service's objection that the survey responses are irrelevant because they are not class specific is not persuasive. The Postal Service's use of customer surveys is not new. For example, in remarks to the National Postal Forum in May 1993, former PMG Runyon stated:

We are working to expand retail service hours and increase convenience nationwide. Earlier this year, we launched a pilot program in the Western Area. It uses customer surveys to ask the community what it wants – earlier service, later service, extra coverage during lunch. More than 500 post offices in the Western Area adjusted their retail hours based on customer input. And, we have begun rolling out this program nationwide.

Tr. 7/3118, Docket No. R94-1.

That the Residential and Business surveys may include inquiries that are not transparently class specific does not render them irrelevant in proceedings before the Commission. While Postal Service management may use the survey results in various ways, *e.g.*, to change window service practices, the responses have several ratemaking implications.

First, witness Tolley's volume estimates consider competitive alternatives to the Postal Service, including, among others, electronic diversion. Use of those alternatives

³ Response of United States Postal Service to OCA Motion to Compel Production of Documents Requested in OCA/USPS-7, October 30, 2001 (Postal Service Response).

may be influenced by various factors, including customers' perceptions of the quality of service rendered by the Postal Service.

Second, questions of a more general nature have a sufficient nexus to issues in this proceeding to justify production of the related responses. Thus, for example, responses concerning whether mail is being delivered to the correct address or the timeliness of its receipt may corroborate or conflict with other proffered evidence, e.g., forwarding costs and service standards. This is not to imply that each question of a general nature satisfies this standard. The OCA's list of requested responses has been pared accordingly.⁴

Third, the Act mandates that rates generate sufficient revenues to recover, as nearly as practicable, Postal Service's total costs, incurred under honest, efficient, and economical management. 39 U.S.C. § 3621. The customer survey results could provide some evidence on that point.

Turning to another issue, the Postal Service's rebuttal to the OCA's contention that the survey results are relevant to issues affecting the contingency is built on supposition. See, e.g., Postal Service Response at 3-4. The Postal Service's argument is essentially a straw man – it assumes the substance of the OCA's testimony, then concludes that it is meritless. Its rather jarring tone notwithstanding, the argument is premature; it addresses the probative value of the assumed testimony, not the relevance of the customer survey results. Furthermore, considering the inherently speculative nature of a contingency, it would be particularly conjectural to attempt to assess the merits of potential testimony that incorporates new types of information. The OCA will be allowed to attempt to use this information in preparing evidence.

Protective Conditions. In response to the OCA, the Postal Service indicates that it intends to provide results to certain questions identified by the OCA subject to "establishment of appropriate protective conditions." Postal Service Response at 4. In

⁴ The Postal Service is directed to provide survey results to the following questions: Residential Survey: 1 a, b, e, and g; 2 b, d, and e; 5 a-f; 6-7; 11 a, b, f, g, and j; 15; and 18-23; Business Survey: 1 a, d, h, k, and l; 3 a and b; 6; 8 a and b; 10; 13; 17-19; 26; and 29-30.

POR No. R2001-1/2, October 12, 2001, participants were cautioned "to seek protective conditions only in circumstances where they are clearly necessary." POR No. R2001-1/2 at 2. The OCA's motion does not request production of the survey results subject to protective conditions. The Postal Service's response reiterates only that the results are not relevant to issues in this proceeding. Postal Service Response at 1. In sum, the Postal Service has not justified attaching protective conditions to either the information it is willing to provide or that which it opposes releasing.

The issuance of protective conditions in POR 2001-1/2 is not to be read too broadly. They were appropriate in light of the circumstances presented, namely, a joint motion for protective conditions, narrowing of the materials at issue, and, implicitly, that the matter might thus be resolved. Those conditions no longer apply to this dispute.

Previously, the Postal Service argued that the survey results are commercially sensitive, contending that the "research is pure gold to any private sector company in the mail handling, receiving or delivery businesses." Postal Service Objection at 3. In light of this, the Postal Service will be given an opportunity to submit a motion to justify the imposition of protective conditions regarding the survey results covered by this Ruling. To the extent it avails itself of this opportunity, the Postal Service is encouraged to detail the potential harm public disclosure may entail. Such motion is due by no later than November 13, 2001.⁵ Responses, if any, are due by no later than November 19, 2001. The Postal Service should be prepared to file the material ordered to be produced herein by no later than the day after the ruling disposing of its motion is issued.

⁵ If the Postal Service decides not to seek protective conditions for some of this material, its responses should be submitted no later than November 14, 2001.

RULING

1. OCA's motion to compel production of documents requested in OCA/USPS-7 is granted, in part, as set forth above.
2. The Postal Service may, if it wishes, file a motion for protective conditions by no later than November 13, 2001 concerning the materials ordered to be produced herein. In the absence of such motion, Postal Service's responses are due no later than November 14, 2001.
3. Responses, if any, to a Postal Service motion for protective conditions are due no later than November 19, 2001.


George Omas
Presiding Officer