

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

**Complaint on First-Class Mail
Service Standards**

Docket No. C2001-3

**DOUGLAS F. CARLSON
MOTION FOR RECONSIDERATION
OF PRESIDING OFFICER'S RULING NO. C2001-3/37**

October 23, 2003

On October 14, 2003, Presiding Officer's Ruling No. C2001-3/37¹ was issued, establishing a deadline of November 14, 2003, for me to submit testimony in support of my direct case. The presiding officer issued this ruling after the Postal Service failed to respond to interrogatory DFC/USPS-7, as the presiding officer ordered on August 27, 2003.² I request reconsideration on two grounds.

First, on October 21, 2003, I received an unsigned document in the mail from the Postal Service titled "Status Report of the United States Postal Service Regarding Discovery." Although this document was dated October 17, 2003, and looks very much like a document that the Postal Service would file with the Commission, this document does not appear on the Commission's Web site. The document is vague on the question of when documents responsive to DFC/USPS-7 will be filed, but an optimistic interpretation — as opposed to a literal interpretation — suggests that the Postal Service may file documents as soon as October 24, 2003. In any event, the Postal Service does not appear to

¹ POR C2001-3/37, filed October 14, 2003.

² POR C2001-3/36, filed August 27, 2003.

have abandoned its obligation to respond to DFC/USPS-7. Therefore, consistent with POR C2001-3/19,³ my deadline for filing testimony should not be earlier than 4½ weeks after the Postal Service responds to all outstanding discovery requests.

Second, DFC/USPS-7 is not the only outstanding discovery request. On May 5, 2003, I filed interrogatory DFC/USPS-16.⁴ This interrogatory reads:

Please refer to the response to DFC/USPS-13 and 15. For mail originating in or destined to the California cities of San Francisco, Oakland, or San Jose, please identify all instances of changes in First-Class Mail service standards from two days to three days that were implemented in 2000 or 2001 in which the affected mail was *planned or scheduled* to be transported by air before the changes in service standards were implemented and in which the affected mail continues to be *planned or scheduled* to be transported by air subsequent to implementation of the changes in service standards. (Note: The terms “planned” and “scheduled” have the same meaning as they do in the first paragraph of the Postal Service’s response to DFC/USPS-13.)

In attempting to justify the downgrades in service standards, the Postal Service has suggested that ground transportation was preferable to air transportation. To the extent that the Postal Service is still using air transportation for mail that suffered a downgrade from two days to three days, the Postal Service’s changes in service standards arguably are arbitrary and unjustified. This interrogatory attempts to determine whether these situations exist.⁵

³ POR C2001-3/19, filed February 6, 2002.

⁴ Douglas F. Carlson Follow-up Interrogatory to the United States Postal Service (DFC/USPS-16), filed May 5, 2003.

⁵ Given the Postal Service’s decision to ignore its legal responsibilities in this case, I regret that I charitably restricted the scope of the interrogatory to mail originating in or destined to San Francisco, Oakland, and San Jose, as a broader examination of this issue would have been valuable.

Unfortunately, I have been attempting to explore this issue since December 3, 2001, when I filed the original interrogatory, DFC/USPS-13.⁶ No question exists that the Postal Service has consciously and deliberately delayed responses to discovery in this case in an attempt to discourage, delay, obstruct, and otherwise frustrate public scrutiny of its operations. The Postal Service did not bother to respond to DFC/USPS-13 until April 11, 2003,⁷ more than 16 months later. One can debate whether the Postal Service's response to DFC/USPS-13 or my follow-up interrogatory DFC/USPS-15⁸ was deliberately evasive or merely nonresponsive. Interrogatory DFC/USPS-16 should have foreclosed the opportunity to provide further unhelpful, misleading, or nonresponsive answers. The Postal Service responded, as it has so often in this proceeding, with silence. More than five months later, the Postal Service still has not responded to this interrogatory.

I share the presiding officer's desire to conclude this case. However, the presiding officer cannot properly react to the Postal Service's failure to respond to a discovery request by, in effect, excusing the absence of a response and proceeding to set a deadline for me to file my direct testimony. If a participant refuses to obey the presiding officer's discovery order, rule 25(c) of the *Rules of Practice* states that the presiding officer

may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken as established for the purposes of the proceeding * * * .

⁶ Douglas F. Carlson Follow-up Interrogatory to the United States Postal Service (DFC/USPS-13), filed December 3, 2001.

⁷ Response of the United States Postal Service to Interrogatory of Douglas Carlson, filed April 11, 2003.

⁸ Douglas F. Carlson Follow-up Interrogatory to the United States Postal Service (DFC/USPS-15), filed April 11, 2003; Response of the United States Postal Service to Interrogatory of Douglas Carlson (DFC/USPS-15), filed May 2, 2003.

If the Postal Service continues to resist responding to DFC/USPS-7 or DFC/USPS-16, I request that the presiding officer provide me with an opportunity to request relief pursuant to rule 25(c). This response, not the automatic establishment of a deadline for submitting testimony, is the appropriate response under the *Rules of Practice*.

For the reasons discussed herein, I request that the presiding officer vacate the deadlines stated in POR C2001-3/37 and begin the process of imposing relief pursuant to rule 25(c).

Respectfully submitted,

Dated: October 23, 2003

DOUGLAS F. CARLSON