

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

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POSTAL RATE AND FEE CHANGES, 1997

POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY  
Docket No. R97-1

MOTION OF THE UNITED STATES POSTAL SERVICE  
FOR LEAVE TO BE EXCUSED FROM RESPONDING  
TO POPKIN INTERROGATORIES DPB/USPS-1 - 68  
(September 15, 1997)

On September 8, 1997, David B. Popkin filed 68 interrogatories, with hundreds of subparts, directed to the Postal Service. The Postal Service received the interrogatories by mail on September 10. As currently posed, the cumulative effect of these interrogatories rises to a level which constitutes an abuse of the discovery process. The Postal Service hereby requests leave from the Presiding Officer to be excused from responding (or objecting) to these interrogatories unless and until Mr. Popkin takes appropriate steps to limit and focus his questions.

The statutory time constraints on postal ratemaking place a duty on all participants to use that time wisely. Of necessity, the Commission establishes a limited time frame in which parties can conduct discovery to better understand the basis for the Postal Service's proposals, and to gather information to support their own proposals. Within this context, however, discovery is a two-way street. If the process is ever going to work within the limited time available, parties must expend some time and resources to familiarize themselves with the substantial amount of material filed by the Postal Service with its case, *before* posing discovery requests. (It should go without saying, moreover, that parties must also limit themselves to matters that relate to postal *ratemaking*, rather than matters which might relate to the Postal Service at some level, but cannot and will not affect the rates recommended

by the Commission.) Parties must appropriately use the testimony and supporting documents filed by the Postal Service to focus and limit their discovery requests. (The term "limit" is used here to mean that requests should be limited to matters that are material as well as relevant, and that have not already been explained in the filing.)

Discovery against the Postal Service is now at its peak. With only perhaps a few exceptions, generally too minor to cause disruption, the intervenors have posed their discovery requests within the above framework. As a result, although there have been some discovery disputes, the Postal Service has been able to respond with a substantial flow of information. In this manner, both the intervenors and the Postal Service are steadily preparing for the hearings that will start in three short weeks. A considerable amount of information remains to be exchanged in that time period, but the process appears to be working as intended.

The interrogatories filed by Mr. Popkin threaten to disrupt that process substantially. On one day, Mr. Popkin has filed two documents containing over 60 pages of complex, convoluted, and largely irrelevant and/or immaterial discovery requests.<sup>1</sup> There are hundreds and hundreds of individual questions posed. The

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<sup>1</sup> In light of the cumulative nature of the abuses against which this motion is intended to protect, and the remedy proposed, the Postal Service does not purport to set forth specific grounds on which individual requests are objectionable. Experience suggests that, regardless of whether or not this motion is granted, disputes regarding individual questions will arise and subsequently have to be addressed with more appropriate specificity. The hope is, however, that the number of instances in which resort will have to be made to such practices will be much more limited if this motion causes Mr. Popkin to receive firm instructions on how to begin to conform his requests to more appropriate discovery practice. While an unfortunate effect of this approach is that a ruling on this motion will require examination of the entire set of interrogatories, rather than a more limited portion to which the Presiding Officer's attention could be directed, the Postal Service, regrettably, sees no alternative that allows appreciation of the full nature of the serious problems created by the approach

Postal Service received these requests exactly one week before the end of scheduled discovery, at the time when the flow of incoming discovery requests is highest. All requests are directed to the Postal Service, as Mr. Popkin has apparently made no effort to consider whether any of the requests could be directed to specific witnesses. There are, in fact, very few indications that Mr. Popkin has even bothered to read the testimony of the Postal Service's witnesses.

Mr. Popkin has obviously been preparing his questions for some time. Rather than submitting individual questions or related sets of questions as prepared, however, Mr. Popkin has chosen to wait and to aggregate them into one large set. While this practice may serve his needs, it is not conducive to any type of orderly discovery practice. To try to deal with his requests within the tight time limits under which this case is being conducted (10 days for objections, 14 days for answers), the Postal Service would, over the coming days, have to dedicate the efforts of a sizeable portion of its staff (witnesses, attorneys, and support personnel) to that task alone. Not only would this be an unreasonable imposition on the Postal Service, but it would also be unfair to other participants, certain of whose legitimate requests for *information would have to be ignored during this most critical juncture of the proceeding*. This serves the interests of neither the Postal Service, the other parties, nor the Commission.

Mr. Popkin has participated in previous general rate case before the Commission. Presuming that he has read the Opinions and Recommended Decisions that resulted from those dockets, he certainly must have some awareness of the types of issues that the Commission will address and resolve in reaching its recommendations. While obviously the particular issues change over time, the types

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to discovery that Mr. Popkin's interrogatories exhibit.

of issues, in terms of scope and detail, are relatively constant. Specifically, while there are at times some overlap between postal operations and postal ratemaking issues, postal operational issues are not, *per se*, the focus of Commission proceedings. Yet it is obvious that Mr. Popkin has made no effort to consider, before posing incredibly detailed questions on postal operations, whether any response the questions might elicit could possibly have any bearing on the Commission's deliberations.

The Postal Service does not dispute that some of the questions posed by Mr. Popkin appear to constitute legitimate discovery. The Postal Service, however, does not believe that it should be its responsibility, nor, for that matter, the responsibility of the Presiding Officer, to wade through the morass of questions submitted by Mr. Popkin on September 8 in order to separate the wheat from the chaff. Therefore, the Postal Service moves to be excused from responding until Mr. Popkin limits and focuses his requests along the following lines:

1. The requests should be reconciled to the Postal Service's filing. Specifically, Mr. Popkin should reexamine the testimonies of the witnesses and his questions to determine which questions fall within the subject matter of particular witnesses. Then, he can determine whether some or all of the information sought in particular questions is already provided, and eliminate or edit questions on that basis. For remaining questions, he can direct some of the specific questions to specific witnesses. Also of substantial logistical importance, he should try to limit each question (including all of its subparts) to topics covered by the same witness. As currently posed, most of his questions have multiple subparts, and in certain instances, different subparts would have to be directed to two or more witnesses. Just trying to keep track of which witnesses are responsible for which subparts becomes a logistical nightmare. (In general, this problem could be mitigated substantially by filing much more focused question, with many fewer subparts.)
2. For questions addressed either to the Postal Service or to specific witnesses, Mr. Popkin should consider whether the topic of the question, and the detail at which it is focused, is germane to the role and function of the Commission in recommending rates. He should be able to eliminate or edit many of the questions on that basis.

The Postal Service further suggests that as this process is conducted, Mr. Popkin submit questions in sets of reasonable size that will not monopolize the Postal Service's discovery response capabilities. It would also be helpful if, when posing a question to which he knows the Postal Service has previously provided an answer, he would provide any citation of which he is aware for that response.

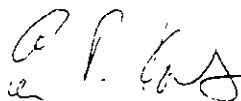
WHEREFORE, the Postal Service respectfully requests that the Presiding Officer issue an order granting leave for the Postal Service to be excused from responding to DBP/USPS-1 - 68 unless and until Mr. Popkin takes appropriate steps to limit and focus his questions, as described above. To facilitate response, a copy of this motion will be faxed to Mr. Popkin today.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking



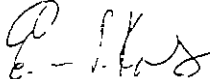
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September 15, 1997

**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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Eric P. Koetting

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