

DOCKET SECTION

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Postal Rate and Fee Changes, 1997)

Docket No. R97-1

OFFICE OF THE CONSUMER ADVOCATE
MOTION TO COMPEL RESPONSE TO INTERROGATORIES
OCA/USPS-T22-20(b), (e) (partial), and (g)
TO UNITED STATES POSTAL SERVICE
WITNESS DAVID R. TREWORGY
September 24, 1997

The Office of the Consumer Advocate ("OCA") files this Motion to Compel in response to the United States Postal Service Objection to Interrogatory OCA/USPS-T22-20(b), (e) (partial), and (g), filed September 22, 1997. The text of the entire interrogatory in question follows (with the objected-to portions in bold type):

OCA/USPS-T22-20. At page 18 of your direct testimony, you state: "I have developed certain capital and program costs for the scanner infrastructure program" You also refer to Worksheet C-1, Scanning Infrastructure Capital and Program Costs.

- a. Are these "certain capital and program costs for the scanner infrastructure program" *all* the capital and program costs for the scanner infrastructure, or are other costs of the scanner infrastructure being distributed elsewhere? Please discuss fully.
- b. **Please provide all documents relating to your development of "certain capital and program costs for the scanner infrastructure program" that you consulted or generated, and that have not previously been submitted to this docket.**
- c. Referring to Worksheet C-1, please discuss how and why you distributed costs to "Overall carrier cost system" each time you did so.

- d. Worksheet C-1 shows total capital costs (in thousands) of \$65,313.2 and program costs (in thousands) of \$120,543.8, for the test year. However, LR H-247 states: Capital investment of \$628.1 million and expense investment of \$76.2 million, totaling \$704.3 million, are recommended to acquire and implement the proposed delivery confirmation system. Of this investment, \$541.4 million will be used to acquire carrier scanners” Please reconcile the Worksheet C-1 figures and the LR H-247 figures, showing the derivations of any such reconciliation.
- e. **When H-247 was first distributed within the Postal Service, were there any attachments to it? If so, please provide them to the extent they have not been submitted to this docket.**
- f. What was the purpose of H-247 institutionally within the Postal Service?
- g. **Please provide all documents relating to return on investment of the proposed delivery confirmation.**

The Postal Service’s Objection herein should be read in conjunction with a similar objection the Postal Service filed on September 12, 1997, to OCA/USPS-T22-12, and in conjunction with the corresponding Motion to Compel filed by OCA on September 18, 1997. Both Objections seek to shield financial information concerning *the purchase of scanners for the Postal Service’s proposed delivery confirmation system*. We incorporate by reference herein the arguments made in our September 18, 1997 Motion to Compel.

The Objection to OCA/USPS-T22-20(b)

Here the Postal Service objects to part (b) because "procurement of these materials in [sic] ongoing"¹ Disclosure of information regarding the components of witness Treworgy's cost estimates "would seriously compromise the procurement process."² This is essentially the same argument the Postal Service made when it objected to OCA/USPS-T22-12. We replied, essentially, that the capital infrastructure costs were significant and there was no way of judging whether we knew all the capital costs, whether the costs had been properly assigned to delivery confirmation, whether total costs were being appropriately depreciated, and whether other costs might appropriately be assigned to other classes of mail.³ Further, witness Treworgy's "development" of capital costs appears to have been based on some sort of estimation.⁴ That negotiations for the relevant equipment are ongoing suggests we really do not know what the capital costs are.⁵

In addition, we would note that the Postal Service has not spelled out exactly how and why contract negotiations would be compromised by revealing actual contract prices. *If they are seeking multiple bids from various vendors such an argument might be plausible.* But it is not if negotiations are being conducted over time with the same

¹ Objection at 1.

² *Id.*

³ OCA Motion to Compel (OCA/USPS-T22-12) at 5.

⁴ *Id.*

⁵ *Id.* at 6.

vendor (here, apparently, Lockheed Martin). OCA would point out that courts do not accord privilege automatically to "sensitive" commercial information. In each case they weigh the claim of privilege against the need for disclosure.⁶

Our recommendation here is the same as it was with regard to OCA/USPS-T22-12.⁷

OCA does not want to jeopardize the negotiation position of the Postal Service. Nor does it want to analyze the subject costs based on what may have been inaccurate cost projections. One reasonable middle ground would be to require the Postal Service to file updates to its worksheets pursuant to protective conditions. Another possibility would be to have the Postal Service reveal when the contract negotiations will be concluded, and require updates at that juncture. The danger of that approach, however, is that negotiations could drag on for some time, so that final updated information will not make it to the record in this proceeding. Perhaps the Presiding Officer can set a reasonable date for disclosure of the relevant contract information by the Postal Service, which would motivate the Postal Service to conclude its negotiations.

In any event, there are discouraging signs that the data in witness Treworgy's worksheets is far from complete. We thus move to compel response to the subject interrogatory.

The Objection to OCA/USPS-T22-20(e) (partial)

This interrogatory asks for any attachments filed in Library Reference H-247. H-247 appears to be the internal justification for the delivery confirmation project. The Postal Service states it "is prepared to file the portions of the documents which relate to the test year and prior year, which relate to the cost estimates in witness Treworgy's

⁶ See, e.g., *Covey Oil Co. v. Continental Oil Co.*, 340 F.2d 993 (10th Cir. 1965).

⁷ *Id.* at 6-7.

testimony, and which can be divulged without any possible effect on the procurement process. Such information will be filed with the answers to this set of interrogatories.”⁸

OCA makes the same recommendation as to this objection as it did for the 20(b) objection. We would note, however, that the Presiding Officer should require the Postal Service to describe the documents (or portions of documents) it is withholding, to state what privilege applies, and to discuss why it applies. This approach is consistent with Federal Rule of Civil Procedure 26(b)(5), which requires such types of disclosure in order to “enable other parties to assess the applicability of the privilege or protection.” Otherwise, it is the Postal Service alone that will be making the decision regarding what types of information will be submitted for the record.

Objection to OCA/USPS-T22-20(g)

This interrogatory asks for all documents relating to return on investment for the proposed delivery confirmation. Apparently, one (redacted) document will be provided in response to our request.

The Postal Service states that return on investment is not an issue of concern to this proceeding. “To the extent information used to calculate return on investment is relevant to witness Treworgy’s cost estimates in this case and is not privileged, it will be provided in response to part (e).” Once again, OCA is concerned that it is the Postal Service, and not the Commission, that will decide which financial information about delivery confirmation is relevant. It is true that “return on investment” per se is not an

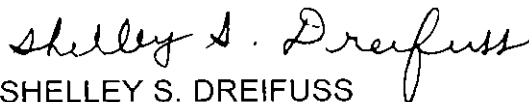
⁸ Objection at 1.

issue. However, the analysis contained in return on investment documents can shed light on the nagging questions regarding capital investment. As stated previously, those questions include whether all appropriate costs have been revealed, and if cost distributions have been made appropriately (since the scanners will serve multiple purposes). We also need to ascertain whether any depreciation method used by the Postal Service is appropriate. Thus, documents relating to return on investment may discuss, for example, how such returns are being calculated for delivery confirmation uses versus other uses of the capital equipment. Such an internal analysis may aid in resolving the capital costs puzzle.

The Postal Service states baldly: "Any other documents which would be responsive to this inquiry are privileged and/or irrelevant." Again, we would ask the Presiding Officer to require the Postal Service to describe the responsive documents withheld, and what the claim of privilege is. Any questions about release of commercially sensitive information can be resolved by permitting examination under protective conditions.

We thus move to compel responses to the subject interrogatories consistent with our discussion herein.

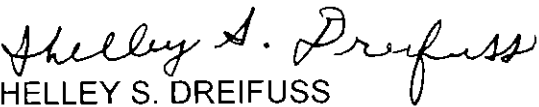
Respectfully submitted,

A handwritten signature in cursive script, reading "Shelley S. Dreifuss".

SHELLEY S. DREIFUSS
Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.


SHELLEY S. DREIFUSS
Attorney

Washington, D.C. 20268-0001
September 24, 1997